

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR**

Civil Application (CAS) No. 71 of 2020

in

Second Appeal No. 426 of 2005

Shekhar S/o Shridharrao Deshmukh

Versus

Vyankatesh S/o Shankarrao Deshmukh (Garge) and others

Office Notes, Office Memoranda of
Coram, appearances, Court's Orders
or directions and Registrar's order

Court's or Judge's Order

Shri A.S.Manohar, Advocate for the appellant.

Shri N.R.Patil, Advocate for the respondents.

CORAM : ANIL S. KILOR, J.

DATED : 7th JANUARY, 2023.

The present application is for recall of order dated 9th October, 2007 and to quash and set aside consequential order dated 7th January, 2008 passed by the learned Registrar Judicial and restore the appeal against the respondent no.3.

2. It is pointed out that the order dated 9th October 2007 was not uploaded and therefore the appellant had no knowledge about the same. However, when the matter was listed for final hearing on 8th January, 2020. The said fact was revealed and immediately the application was made.

3. Learned counsel for the respondent no.3 opposed the present application and prays for dismissal

of the present application on the ground that the application for condonation of delay was not filed as the appellant is praying for restoration of appeal against the respondent no.3.

4. I have perused the order dated 9th October, 2007 and the application.

5. It appears that the said order was not uploaded on the official website of the High Court and counsel for the respondent no.3 is also not disputing this fact.

6. Thus, it can be seen that the appellant had no knowledge about the said order and therefore, he could not take steps which resulted in dismissal of appeal against the respondent no.3.

7. In the above referred circumstances, it cannot be said that it is the fault of the counsel for the appellant in not taking any steps in the matter as ought to have been taken in compliance of the order dated 9th October, 2007.

8. In that view of the matter, without going adopting hyper technical approach as regards non-filing of application for condonation of delay, I am of the opinion, application needs to be allowed. Accordingly, it is allowed.

[ANIL S. KILOR, J.]