



THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

CIVIL APPLICATION (CAS) NO. 811 OF 2023
IN
SECOND APPEAL NO. 14 OF 2009

DAULATRAO S/O. ZIBAJI MESHRAM

...VERSUS...

BAINABAI WD/O. DAYAL MESHRAM (DEAD) THR LRS. i.e. R-2 AND ORS.

*Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders.*

Court's or Judge's order

Shri R.V.Manmode, Advocate h/f. Shri P.A. Abhyankar, Advocate for appellants.
Ms. V.P.Thakre, Advocate for respondent no. 2.

CORAM : SMT. M. S. JAWALKAR,J.

DATE : 13th OCTOBER, 2023

The present application is filed for condonation of delay in filing application for setting aside order dated 29/07/2010 passed by Registrar (J).

2. By this order, the suit was dismissed against respondent no. 4(i) to 4(iii). It is submitted that the appellant is old aged person and met with an accident, therefore, he could not file appropriate application within time for correct the addresses in respect of respondent no. 4(i) to (iii). As such, there is delay of 4709 days in filing application for setting aside order of Registrar (J).

3. It appears that the service is effected through email to the respondent nos. 4(i) to 4(iii) on this application. In spite of service, none-appears for them.

4. The learned counsel for respondent no. 2 vehemently opposed the application.

5. Though I am not satisfied with the reasons given by the appellant for condoning the delay in filing application for setting aside order of Registrar (J), but in view of the facts that the appeal is pending and the other respondents are already on record, no prejudice will be caused to the other respondents, if the application is allowed, I am inclined to allow the application, however, subject to costs. As such, the application is allowed.

6. Delay in filing application for setting aside order dated 29/07/2010 passed by Registrar (J) is hereby condoned, subject to costs of Rs. 2,500/- to be deposited with the High Court Legal Services Sub-Committee, Nagpur within a period of three weeks.

7. Accordingly, the application stands disposed of.

CIVIL APPLICATION (CAS) NO. 810 OF 2023

The present application is filed for setting aside order dated 29/07/2010 passed by Registrar (J), by which order, the appeal against respondent nos. 4(i) to 4(iii) came to be dismissed for want of service.

2. The learned counsel for the appellant submits that he has taken efforts to serve respondent no. 4(i) to 4(iii), however, due to his old age and met with the accident, he could not file appropriate application for correct the addresses of respondent nos. 4(i) to 4(iii).

3. The reason given is not intentional and otherwise the Second Appeal is pending against respondent nos. 1 and 2. Considering the aforesaid reasons, the application is allowed.

4. The order dated 29/07/2010 passed by Registrar (J) is hereby set aside.
5. Registry is directed to restore the appeal against respondent no. 4(i) to 4(iii).
6. After registering the same, the necessary amendment to be carried out and re-issue the notices to respondent nos. 4(i) to 4(iii) afresh on merits.
7. By this order, restoration of appeal against respondent nos. 4(i) to 4(iii) shall be subject to deposit of costs of Rs. 2,500/- as directed in CAS No. 811/2023 above.
8. Accordingly, the application stands disposed of.

(Smt. M.S. Jawalkar, J.)

B.T.Khapekar