

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

MISC. CIVIL APPLICATION NO.731 OF 2019

(Vijay s/o Rahoji Kokare Vs. Shri Prakash Chintaram Mohite and anr.)

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

Court's or Judge's Order

Mrs. S.W. Deshpande, Advocate for the appellant.
Shri P.D. Meghe, Advocate for respondent Nos.1(a to d).

CORAM:- URMILA JOSHI-PHALKE, J.

DATED :- JANUARY 20, 2023.

Heard.

2. By this application, the appellant is seeking restoration of the appeal which is dismissed in default on 24/04/2019. It is submitted that the Counsel of the appellant inadvertently did not mark the case and therefore, the matter was dismissed in default.

3. Shri Meghe, learned Counsel raised objection on the ground that during the entire proceeding before the appellate Court, the appellant was reluctant and not attended the proceedings hence, application deserves to be rejected.

4. Heard both the sides and perused the record.

5. It is well settled that while considering the restoration application, the opportunity is to be given to the parties to litigate the dispute on merits. The reasons mentioned in the application shows that as the Counsel inadvertently did not mark the case, and therefore, the appeal was dismissed.

6. The litigants shall not suffer for the mistake of the learned Counsel. The reasons mentioned in the application appears to be reasonable one. Hence, the appeal is restored at its original stage.

7. Miscellaneous civil application is disposed. of.

CIVIL APPLICATION NO.577/2022

Heard.

2. By this application, the applicant is seeking condonation of delay of 10 years 5 months and 20 days in bringing legal representatives of respondent No.1 on record.

3. It is submitted by the learned Counsel for the appellant that due to pandemic situation of Covid-19 and the appellant was not having knowledge about the death of the respondent No.1, therefore, legal representatives of respondent No.1 are not brought on record. Delay is not deliberate one and hence delay be condoned.

4. On the other hand, Shri Meghe, learned Counsel for the proposed legal representatives of respondent No.1 raised strong objection on the ground that the appellant is not vigilant and no reasonable and justifiable reasons are mentioned in the application for condonation of delay.

5. It is well settled that while considering the application for condonation of delay or setting aside abatement that the litigants should be permitted to litigate their cause on merits. Admittedly, the delay caused is inordinate one however, considering the reasons

mentioned in the application, the delay is condoned.

6. The appellant is seeking permission to bring legal representatives of respondent No.1 on record by setting aside abatement order.

7. Respondent No.1 died long back i.e. on 02/12/2011. Respondent No.1 has not filed Pursis, and therefore, the appellant was not having any knowledge about the death of the respondent No.1.

8. Considering the same, permission is granted to the appellant to bring legal representatives of respondent No.1, on record and abatement order against respondent No.1 is set aside.

9. Shri Meghe, learned Counsel waives notice for proposed legal representatives of respondent No.1.

10. The application is allowed.

11. The appellant to carry out necessary amendment within two working days.

FIRST APPEAL NO.684/2008

The appeal is already restored.

2. Paper book is already filed on record. Learned Counsel for the legal representatives of respondent No.1 shall collect the copy of paper book within eight days.

3. The appellant to proceed with the appeal.

4. Appeal be placed for final hearing on 02/02/2023 at 2.30 pm.