

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

CIVIL APPLICATION (CAO) NO.2223/2019

WITH

CIVIL APPLICATION (CAS) NO.1005/2019

IN

SECOND APPEAL NO.132/2010

Jose Thomas s/o Virky Thomas

Vs.

Ku. Samina Ali d/o Meera Muzzamil Ali and others

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

Court's or Judge's orders

Ms R.G. Bajaj, Advocate for appellant

CORAM : ANIL L. PANSARE, J.

DATED : 28/06/2023

By these applications, the applicant/appellant is seeking condonation of delay of 3023 days in filing application for restoration of appeal, which was dismissed against respondent Nos.1, 3, 4 and 5 and for restoration of Second Appeal.

2. The learned Counsel for the appellant submits that the appeal came to be dismissed against these respondents by the learned Registrar (Judicial) on 28/07/2011, for the reason that learned Counsel for appellant failed to furnish correct addresses of these respondents.

3. The learned Counsel for appellant submits that inadvertently, the Counsel lost the track of the matter pending before the learned Registrar. She submits that the directions were issued to file paper book and thus she was under the presumption that respondents have been served.

4. These respondents were served through paper publication in these applications as their correct addresses was not available with the appellant. She submits that mistake is inadvertent and not intentional.

5. The record indicates that the learned Registrar has notified the appeal on 25/02/2011 for taking steps and has observed that despite giving sufficient opportunity on several occasions, the appellant has not taken steps, and therefore, he was left with no other alternative but to dismiss the appeal against these respondents in terms of Order VII Rule 6 (e) of the Bombay High Court Appellate Side Rules, 1960.

6. It appears that despite several opportunities, the appellant failed to furnish correct addresses of these respondents.

7. Learned Counsel for appellant made an attempt to justify the delay and to certain extent has justified the delay when she states that she has filed paper book as well. However, the justification in not attending appeal before the learned Registrar is short of reasonable satisfaction and therefore, the appellant will have to pay cost. Hence following order:

ORDER

i) The Civil Application No.2223/2019 for condonation of delay in filing restoration of Second

Appeal and Civil Application No.1005/2019 for restoration of appeal are hereby allowed, subject to cost of Rs.5000/- to be paid or deposited by the appellant with the Maharashtra Legal Services Sub Committee, Nagpur.

ii) The order dated 28/07/2011 passed by the Registrar (Judicial) stands set aside, subject to payment of costs.

iii) Upon depositing the cost, the delay shall stand condone and thereafter, the appeal shall stand restored on file against respondent Nos.1, 3, 4 and 5.

Both Civil Applications stand disposed of in above terms.

(ANIL L. PANSARE, J.)

R.S. Sahare