



This order is modified as per speaking order dtd. 10.03.2025.

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD
CIVIL APPELLATE JURISDICTION**

**CIVIL APPLICATION NO.795 OF 2022
IN
SECOND APPEAL NO.339 OF 1997**

Eknath Gatalu Dhobi (Died),
through L.Rs. Mirabai & Ors.

...Applicants

Versus

Supdu Gatalu Dhobi (Died)
through L.Rs. Sarjabai (Died), L.Rs. Vitthal & Ors...Respondents

Mr. K. M. Nagarkar h/f. Adv. S. B. Talekar for Applicants.

Adv. L. V. Sangit for Respondent Nos.1/2 and 1/5.

CORAM : S. G. CHAPALGAONKAR, J.

DATED : 18th NOVEMBER 2024.

P.C.:-

1. By this application, Applicants seeks to withdraw and set aside the order dated 13th August 2003 passed by the learned Registrar of this Court in Civil Application (Stamp) Nos.23535 of 2002 and 23536 of 2002 in Second Appeal No.339 of 1997, by which registration of the civil applications has been refused for non-removal of office objections.

2. Mr. K. M. Nagarkar, learned Advocate appearing for the Applicants submits that the second appeal filed by the Applicants was admitted by this Court on 28th June 1997. Meanwhile, the sole

Respondent expired. The Applicants, therefore, filed two aforesaid applications, one for condonation of delay and second seeking permission to bring on record legal heirs of deceased Respondent. Inadvertently, the objections raised by office in those civil applications have gone unattended and consequential order of refusal of registration has been passed on 13th August 2003. He would submit that the aforesaid order of refusal of registration has gone unnoticed. However, the second appeal was appearing on the board. The order of refusal of registration of aforesaid civil application was not even carried forwarded by office indicating dismissal of second appeal for non-bringing legal heirs of sole Respondent on record. Mr. Nagarkar would submit that the second appeal appeared on the board on various dates till 2021. He pointed out that on 2nd July 2008, 13th March 2013, 17th June 2016, 3rd December 2021 and 4th August 2021, the second appeal was listed and status was shown as pending/admit. However, when the sole Appellant died and the Advocate for the Appellant took action for bringing legal heirs of sole Appellant, he noticed about the aforesaid orders passed in the year 2003 and immediately for present application. He would submit that inadvertent error on the part of the Advocate appearing for the Applicants needs to be pardon. The second appeal pertains to the rights of the parties over the immovable properties, which needs decision on merits. Therefore, he urges to allow the application by setting aside the impugned order.

3. Per contra, Mr. L. V. Sangit, Advocate appearing for Respondent Nos.1/2 and 1/5 vehemently opposed the application. He would submit that there is inordinate delay of 18 years in filing present application and, therefore, one line explanation that the Applicants was not knowing about the impugned order. He submits that apparently, the Applicants was not diligent in prosecuting the appeal by putting the blame on the Advocate, he would seek excuse of his non-negligence. Mr. Gore further submits that in light of law laid down by Supreme Court of India in the case of *Balwant Singh (Dead) Vs. Jagdish Singh & Ors.*¹ and in the case of *Katari Suryanarayana & Ors. Vs. Koppiseti Subba Rao & Ors.*². The huge delay caused in filing the present application cannot be condoned.

4. Having considered submissions advanced, it can be noticed that the parties are litigating for civil rights. The second appeal arises from the decree pertaining to partition and separate possession. This Court finding the merit in contention of the Appellant, admitted second appeal vide order dated 28th June 1997. Meanwhile, sole Respondent expired. The Applicants, therefore, filed application for brining legals heirs of Respondent No.1 along with the application seeking condonation of delay. The office note shows that certain objections were raised in the civil application. However, those were not removed in time. Consequently, the civil application suffered dismissal. Pertinently,

1 2010 AIR SC 3043

2 2009 (11) SCC 183

the second appeal was shown live till 2021 with the status as admitted and pending for hearing. In this background, the possibility that the Applicants came to know about the impugned order only when the Advocate wanted to take steps to bring on record the legal heirs of the sole Appellant cannot be ruled out. Definitely, there is inordinate delay in filing present application. However, looking to the nature of the dispute, it would be in the fitness of things to condone the delay. However, subject to exemplary cost. Consequently, following order is passed:-

- (i) Civil Application is allowed in terms of prayer clauses (b) and (c), subject to condition that Applicants deposit the cost of Rs.25,000/- in the registry of this Court. On deposit of the cost, the same be paid to the Respondent Nos.1/2 and 1/5.
- (ii) The cost to be deposited within a period of four weeks. The Applicants shall also remove the office objections within the aforesaid period. However, if office objections are not removed or the cost is not deposited, the impugned order of the Registrar will govern the proceedings.

(S. G. CHAPALGAONKAR, J.)

Tauseef