



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

933 CIVIL APPLICATION NO. 8773 OF 2023
IN
CA/10671/2010 IN SECOND APPEAL ST.NO.4087 OF 2008

Shankar Tatyaba Taware through his L.Rs. Kokila w/o
Vishwambhar Jadhav and others.

VERSUS

Shashikant Baburao Choudhari

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Advocate for Applicant : Mr. S.P Tandale h/f S.B. Solanke

Advocate for Respondents : Mr. V.S. Undre

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CORAM : S. G. CHAPALGAONKAR, J.

Dated : November 27, 2024

PER COURT :-

1. By this application, the applicants seek to condone delay of 2457 days caused in filing the application for restoration and also to quash and set aside the order dated 6.6.2016 passed by this Court and restore CA No.10671 of 2010 in SA ST no.4087 of 2008.

2. Learned advocate appearing for the applicants submits that originally second appeal was filed by Shankar Tatyaba Taware. He expired on 22.02.2019 due to old age. The applicants are his legal heirs and they wish to prosecute the second appeal. Learned advocate appearing for the applicants submits that, after death of Shankar, L.Rs. approached advocate in the month of January, 2023 and inquired about status of the matter. At that time, they came to know that civil application no.10671 of 2010 that was filed by

Shankar has been dismissed. Immediately, after getting knowledge of the aforesaid fact, present application has been filed.

3. Mr. Undre, learned advocate appearing for the respondent strongly opposed prayers in the application. He would submit that this second appeal was never prosecuted diligently. It was dismissed in default vide conditional order dated 22.11.2010. Thereafter, application for restoration was filed. It was also dismissed in default. Thereafter, vide Civil application no.9889 of 2011 again prayer was made for restoration of CA No.10671 of 2010. It was allowed on 3.7.2015 by granting three weeks time to remove office objections. Again C.A. No.9889 of 2011 was taken on record and the same was disposed off on 29.4.2016 by granting time to take steps prior to 6.6.2016. Again, for non-compliance, civil application stands dismissed for want of prosecution. Therefore, he submits that, there is no justifiable reason to grant relief as prayed in this application.

4. Having considered the submissions advanced, it is apparent that, original appellant Shankar died on 22.2.2019 due to his old age. The applicants L.Rs. filed present application on 27.3.2023 stating that they got knowledge about dismissal of CA No.10671 of 2010 on 2.1.2023. There is no counter to aforesaid pleadings in the application. If original applicant has died and the applicants filed present application after getting knowledge of the proceeding and orders, delay caused in filing application cannot be said to be intentional.

The explanation tendered is plausible. It is true that, respondent has been unnecessarily troubled by continuation of the proceeding and lethargic approach of the original applicants in conduct of the matter. In that view of the matter, some costs needs to be imposed on the applicants. Hence, civil application is allowed in terms of prayer clause 'B' and 'C' subject to condition that the applicants pays costs of Rs.5,000/- (Rs. Five Thousand) to the respondent within a period of four (4) weeks from today, so also removes office objection within same period. In case of non-payment of costs or non-removal of office objections, the order of dismissal of civil application no.10671 of 2010 shall govern the proceeding. Civil application stands **disposed off**.

(S. G. CHAPALGAONKAR, J.)

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