

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

INTERIM APPLICATION NO. 17147 OF 2023
IN
SECOND APPEAL (ST) NO. 27773 OF 2019

Fattroddin Ramjan Paik

...Applicant/

...Appellant

Versus

Narendra Jagannath Lobhe And Anr.

...Respondents

Mr. Samir Kumbhakoni, for Applicant/ Appellant.
None for Respondents.

CORAM : M.M. SATHAYE, J.

DATE : 12th FEBRUARY 2024

P.C. :

. This is an application for restoration of above Second Appeal which is dismissed as a consequence of conditional order dated 28/09/2021 for non removal of office objections.

2. Heard learned counsel for the Applicant. None for the Respondents. Office note shows that the application is filed in time, in view of suspension of limitation period due to corona pandemic under the order of Hon'ble Supreme Court. It is submitted that the only objection which could not removed in time was payment of Court fee of Rs.2,500/- which is indicated by office note also.

3. Considering the fact that the Second Appeal was never heard for admission and that till the conditional order dated 28/09/2021

was passed, notices to Respondents were never issued, notice to Respondents in this application is dispensed with.

4. Considering the averments in the application, sufficient cause is made out. Valuable right to challenge the impugned Order on merits can not be taken away for non-payment of court fees, without giving sufficient opportunity. It is just and necessary to hear the appeal on merits.

5. Hence, this application is allowed in terms of prayer clauses (b) and (c) and the second appeal is restored to the file, subject to condition that the Applicant shall pay deficit Court fee within a period of 4 weeks from today. It is clarified that if the deficit Court fee is not paid within stipulated time, this application as well Second Appeal will stand rejected/dismissed, without further reference to Court.

6. All concerned to act on duly authenticated or digitally signed copy of this order.

(M.M. SATHAYE, J.)