

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIRCUIT BENCH AT KOLHAPUR
INTERIM APPLICATION NO.16502 OF 2023
IN
SECOND APPEAL (STAMP) NO.19058 OF 2011

SARASWATI BABU BECHAVADE & ORS. ..APPLICANTS

IN THE MATTER BETWEEN:-

SARASWATI BABU BECHAVADE & ORS. ..PETITIONERS

VERSUS

SHRI. PANDHURANG BABU BECHAVADE & ORS. ..RESPONDENTS

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Ms. Padma Chinta i/by Mr. Harshad V. Bhadbhade, Advocate for Applicants.

Mr. S. C. Mangle, Advocate for Respondents.

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CORAM : S. G. CHAPALGAONKAR, J.

DATED : 25th SEPTEMBER, 2025.

FINAL ORDER:-

1. Heard learned Advocates appearing for respective parties.

2. The present application is filed with following prayers:

“(b) This Hon’ble Court be pleased to recall its order dated 22.11.2011/222.2012 passed by this Hon’ble Court and by the Learned Registrar and restore the above proceedings back to the file for disposal as per merits;

“(c) The delay of 11 years 85 days, in preferring the present application, may kindly be condoned;”

3. It is contention of applicants that applicants are original defendants in Regular Civil Suit No.65/1988 instituted by respondent no.1 seeking decree of partition and separate possession. The suit was decreed vide judgment and order dated 31.07.2000. The applicants preferred Regular Civil Appeal No.73/2003, which came to be rejected on 27.11.2008. Aggrieved applicants filed Second Appeal before this

Court alongwith application to condone delay of 102 days. Pending application for delay condonation, respondent no.2 expired. Therefore, application for bringing his legal heirs was filed, so also Civil Application for substitute service of respondent no.8 was filed. The applicants were under impression that proceeding will take its own time. However, when they received notice of execution of decree and made enquiry regarding progress of Second Appeal, they came to know that Second Appeal has been dismissed by virtue of conditional order dated 22.11.2011 for want of steps against unserved respondent nos.6 to 8. Immediately after getting knowledge of dismissal of Second Appeal, they moved application for recall of order with prayer to condone delay.

4. The learned Advocate appearing for applicants submits that default on part of applicants is unintentional. It was inadvertent error. They had engaged Advocate to prosecute Second Appeal. However, they were not made aware about order dated 22.11.2011 and consequential order dated 22.02.2012.

5. The learned Advocate appearing for respondents vehemently opposes application contending that for 11 years applicants were in slumber and when decree was put to execution, present application is moved to create obstacle in execution proceeding. He would, therefore, urge to reject application.

6. Having considered submissions advanced on behalf of learned Advocates appearing for respective parties, it can be observed that applicants are litigating over rights in ancestral property. They suffered decree of partition and separate possession, which is subjected to challenge in Second Appeal. The record indicates that on 22.11.2011, conditional order was passed for taking steps against unserved respondents. However, such steps were not taken, resulting into dismissal of Second Appeal.

7. Apparently, applicants had engaged Advocate. The certain steps like filing application for bringing legal representatives of deceased respondent no.2 and steps for providing alternate addresses of some of respondents were taken, but it was not complete compliance of office objections. In result, Appeal suffered dismissal for technical reason.

8. Normally in civil disputes *lis* must end with final adjudication on merit. Therefore, unless deliberate default on part of applicants is seen or gross negligence is depicted from their conduct, dismissal of Appeal on technical ground needs to be recalled.

9. In present case, it is difficult to hold that applicants deliberately defaulted in removing office objections or taking necessary steps in Appeal. Further, possibility that applicants were under bonafide impression about pendency of Appeal, looking to time that is normally taken for listing of matters cannot be ruled out. However, certainly

respondents have been prejudiced, when application is moved after 11 years seeking restoration of Appeal. In backdrop of aforesaid situation, appropriate balance needs to be carved out by awarding compensatory costs to contesting respondents/plaintiffs while allowing this Interim Application. Hence, following order:

ORDER

a. Interim Application is allowed in terms of prayer Clauses (b) and (c) subject to condition that applicants remove all office objections within period of six weeks from date of this order and deposit/pay cost of Rs.50,000/- to respondents/plaintiffs. Cost to be deposited with Registry or be paid to plaintiffs through their Advocate.

(S. G. CHAPALGAONKAR)
JUDGE