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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
INTERIM APPLICATION NO. 18261 OF 2023
IN
SECOND APPEAL (ST) NO. 18866 OF 2019**

Marutrao Shivram Patil and Ors ... Applicants

vs.

Jaysing Baburao Kadam and Ors ... Respondent

Mr. Uday Warunjikar a/w. Mr. Siddhesh Pilankar for Applicants.

Mr. Abhijit P. Kulkarni a/w. Mr. Abhishek Raj and Gourav Shahane
for Respondent Nos. 1 and 2.

CORAM : GAURI GODSE, J.

DATED : 18th NOVEMBER 2024

ORDER:

1. This application is for restoration of the second appeal with a prayer to recall the order dated 13th December 2019. By order dated 13th December 2019, passed by the learned Registrar(Judicial-II), conditional time was granted to remove office objections. Since, the objections were not removed, the registration of the second appeal stood refused.

2. There is a huge delay in filing this application. The applicants

have prayed for condonation of delay of 3 years and 344 days. Learned counsel for the applicants submits that the delay has occurred as the applicants were unaware about the listing of the dates due to COVID-19 pandemic lock down and thus, the applicants could not contact their advocate in time. Learned counsel for the applicants further submits that since applicant no.1 was unwell, he was unable to contact his advocate for removing office objections.

3. Learned counsel for the applicants has tendered an additional affidavit dated 11th November 2024. The affidavit is taken on record. The additional affidavit is filed by applicant no.2. The additional affidavit states that applicant no.1, i.e. the father of applicant no.2 was looking after the litigation. However, due to his advanced age, he was unable to contact his advocate. The additional affidavit refers to applicant no.2's illness and inability to take steps due to the COVID-19 pandemic. Learned counsel for the applicants, therefore, submits that the delay in filing the present application is unintentional. Thus, he prays for condonation of delay and restoration of the second appeal.

4. Learned counsel appearing for respondent nos. 1 and 2 opposes the application. He submits that respondent no.1, i.e.

defendant no.1, has expired long back. He submits that by order dated 5th January 2024, the applicants were granted time to take steps. He, however, submits that no steps are taken against deceased respondent no.1.

5. Learned counsel for respondent nos. 1 and 2 submits that the applicants are the original plaintiffs who had filed a suit for specific performance against deceased respondent nos. 1 and 2 as well as other respondents. He submits that in view of the death of respondent no.1 on 14th December 2022, the second appeal stands abated. He submits that since the decree is indivisible, the entire second appeal stands abated as a whole. He, thus, submits that the application for restoration would, therefore, not survive. Learned counsel for respondent nos. 1 and 2 further submits that only with an intention to keep the litigation pending the present application is filed. He submits that allowing delay without any justifiable reasons would defeat the rights created in favour of respondent nos. 1 and 2. He submits that the conditional order was passed much prior to the Covid-19 pandemic. He submits that the application is filed by giving vague reasons for condonation of delay of almost four years. Learned counsel for respondents nos. 1 and 2, therefore, opposes the grant of any prayers in the present application.

6. I have perused the application as well as the additional affidavit. Learned counsel appearing for respondent nos. 1 and 2 is right in submitting that in view of death of respondent no.1, proceedings will stand abated against respondent no.1.

7. Learned counsel for respondent nos. 1 and 2 is, thus, right in submitting that the application would not survive against the rest of the respondents. The second appeal arises out of the concurrent judgments and decrees dismissing the suit for specific performance. The prayer for specific performance is against respondents nos. 1 and 2. Hence, the impugned decree is indivisible. Hence, in view of the death of respondent no.2, the proceedings would abate as a whole. Hence, in view of the death of respondent no.1, the present application would not survive against respondent no.2, as there cannot be inconsistent decrees.

8. The reasons stated in the application are bereft of any explanation regarding taking steps for the removal of office objections within the time granted by conditional order or even thereafter. The application and the additional affidavit do not pertain any explanation regarding steps taken to remove office objections. The reasons for the delay are also vague. The applicants relied on a medical certificate issued in the name of applicant no.1 to support the ground of delay. The medical certificate is dated 1st November

2023, which indicates that applicant no.1 is diagnosed with Ischemic Heart Disease and Dementia. However, the certificate does not refer to any period of illness or the period of treatment. The second reason regarding the lockdown due to the COVID-19 pandemic is also equally vague. The conditional order was passed in December 2019, when there was no COVID-19 pandemic. The application is filed sometime in November 2023 without giving any reasons for not taking steps to remove office objections and without any justifiable explanation for not taking steps for almost four years.

9. There is no justifiable ground to condone the huge delay of four years. For the reasons stated above, the application is dismissed.

(GAURI GODSE, J.)