

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

INTERIM APPLICATION NO.2628 OF 2022
IN
FIRST APPEAL NO.386 OF 2012

Ramsanehi Patel

Since deceased through legal heirs

Gopal Ramsahehe Patel & Ors.

..Applicants

Versus

Chhaganlal Jhaverchand Jain

..Respondent

Mr. R. S. Maurya, for the Applicants.

Ms. Uma Sharma i/by Dharam & Co., for the Respondent.

CORAM : KISHORE C. SANT, J.

DATE : 19th APRIL, 2024

PC.

1. This Application is filed seeking restoration of the First Appeal that was dismissed in view of conditional order dated 24.01.2019. This Court had passed common order in number of matters directing the parties to supply paper-book within 8 weeks from the date of order. In case of failure, matters were to stand dismissed for non-prosecution without further reference to the Court. It is the case of the Applicants that the Appeal was filed by father of the present Applicants who was looking after this matter. Father unfortunately died on 14.02.2020. Immediately thereafter lock-down started in view of Covid-2019. Applicants thus could not get knowledge of the order. It is only when they made inquiry with

the advocate about pendency of the matter, they came to know about dismissal order. There is delay of 1079 days caused in filing the Application. They have already filed another application for bringing them on record and the same is allowed by separate order.

2. The Respondent vehemently opposes the Application stating that it was duty of the present Applicants to be diligent and to make inquiry about the pendency of the matter. Now the order has already taken effect. In the alternative, she prays for imposition of heavy cost.

3. It is quite natural that during the lifetime of the father, these Applicants had no reason to look after the matter. The father also died during lock-down on 14.02.2020. For all these reasons, Application deserves to be allowed, subject to cost of Rs.2,500/-

4. The Application stands allowed.

5. Cost be paid to Advocates Association of Western India (A/c No : 000110110007807, Bank Name : Bank of India, Branch Name : Mumbai Main, IFSC Code : BKID0000001) within two weeks from today and produce receipt of the same in the office.

[KISHORE C. SANT, J.]