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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
CIVIL APPLICATION NO. 29 OF 2024
IN
CIVIL APPLICATION NO. 1484 OF 2014
IN
SECOND APPEAL NO. 235 OF 2014**

Smt. Maryambi Zikriya Mujawar and Others ... Applicants

Vs.

Smt. Fatimabee Dilawar Jamadar and Others ... Respondents

Mr. Rakesh Bhatkar for the Applicants.

Ms. Anjali Neel Helekar a/w. Ms. Shalaka P. More for Respondent
No.1.

CORAM : GAURI GODSE, J.

DATE : 22nd OCTOBER 2024

ORDER :

1. This application is for restoration of the Second Appeal and Civil Application No. 1484 of 2014. There is a prayer for condonation of delay of 60 days in restoring the application. Learned counsel for the applicants submits that the Civil Application No. 1484 of 2014 was filed for restoration of the Second Appeal. Restoration application was dismissed on 18th January 2018 as none had appeared on behalf of the applicants. He submits that since the applicants' Advocate was unwell he could not attend the proceedings on 18th January 2018.

2. To justify delay of 60 days in filing restoration application, learned counsel for the applicants relies upon the old age of one of the applicants and illness of one of the applicants. Learned counsel submits that since the applicants were unavailable for verification of the restoration application, there is delay in filing the application. He submits that the delay therefore be condoned and the application for restoration of the Second Appeal as well as the Second Appeal be restored.

3. Learned counsel appearing for respondent no. 1 i.e. original plaintiff vehemently opposes this application. She submits that respondent no.1 i.e. original plaintiff has expired on 3rd February 2024. She submits that the plaintiff's heirs and legal representatives are brought on record in the final decree proceedings. She thus submits that though the applicants are aware about the respondent no. 1's death, no steps have been taken in this application.

4. She further submits that only to delay the execution of the partition decree the present Second Appeal in some or other form is kept pending. She further submits that the Second Appeal was filed in the year 2009 and registered in the year 2014. She submits that till date the original plaintiff is unable to execute the decree passed in her favour in the year 2004. She further submits that now the

heirs and legal representatives are also unable to execute the decree as there are obstructions caused on behalf of the applicants in view of the pendency of this application.

5. I have perused the papers of the application. The Civil Application No. 1484 of 2014 was dismissed on 18th January 2018 by passing following order :

“Learned Counsel for the Respondents are present. They make a grievance that the Applicants are not diligently prosecuting the application and in spite of clarification by this Court that there is no ad-interim order, obstructions are being raised in execution of the partition proceedings.

2. On 22nd April 2016, none had appeared for the applicants. Out of indulgence, notice was issued to the respondents. Thereafter, the matter has appeared before the Court and the Registry, since no steps are taken application is not being diligently prosecuted. Even today, none appears for the Applicants.

3. Civil Application is dismissed for non prosecution.”

The said application was for restoration of the Second Appeal. In the present application though the prayer is made for restoration of the Second Appeal as well as the Civil Application, there is no prayer made for recalling the order of 18th January 2018. There are

no submissions for recalling order dated 18th January 2018 dismissing the Civil Application by giving reasons.

6. The present application is filed only with prayer for condonation of delay and restoration of the Second Appeal with Civil Application without raising any grounds for recalling the order dated 18th January 2018.

7. The decree for partition and separate possession is of the year 2004. The Second Appeal was filed in the year 2009 and the same was registered in the year 2014. The Second Appeal remained pending and was never heard for admission.

8. So far as the reasons for condonation of delay are concerned, the grounds raised for condonation of delay are vague and without any particulars. Even if the Advocate's absence on 18th January 2018 is accepted on the ground of ill health, there are no reasons stated for not taking immediate steps for recalling the order of 18th January 2018.

9. There are four applicants, however the reasons of illness and old age is mentioned about only one applicant i.e. Applicant no. 3. Though the application states that because of his old age and illness he was unable to visit the Advocate's office, the cause title of

the application shows that Applicant no. 3 is 48 years. Hence, I do not see any reason to accept that due to his old age he was unable to visit the office. There are no reasons stated in the application as to what steps were taken. The application is as vague as possible. Even otherwise there is no prayer made for recalling order dated 18th January 2018.

10. Perusal of the order dated 18th January 2018 clearly indicates that the Civil Application for restoration of the Second Appeal, was dismissed for the reasons as recorded in the said order. Thus, without recalling the said order, the Civil Application and Second Appeal cannot be restored.

11. The application is devoid of any merits and is filed only to prolong the execution of the partition decree in favour of the plaintiff.

12. For the reasons recorded above, the Civil Application is dismissed.

[GAURI GODSE, J.]