



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

MISC. CIVIL APPLICATION (RESTO.) No.841 OF 2024

IN

SECOND APPEAL No.564 OF 2006 (D)

(Uttam s/o. Shankar Shikare Vs. Smt. Gitabai wd/o. Shankar Shikare and another)

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's Orders.

Court's or Judge's orders.

Mr. P.S. Chawhan, Advocate for appellant.
Mr. K.S. Narwade, Advocate for respondent No.2.
Mr. P.A. Deshpande, Advocate for Intervenor.

CORAM : SANJAY A. DESHMUKH, J.

DATE : 4th OCTOBER, 2024.

1. This is an application for restoration of the second appeal dismissed for non-appearance of respondents.

2. Learned Advocate for the applicant pointed out the grounds raised in the application for condonation of delay. It was allowed by this Court. The applicant was not knowing that appeal was dismissed. He further submitted that delay is not deliberately caused. If the application is not allowed, the applicant will suffer forever. The civil rights of the parties are to be decided on merit. He, therefore, submits to allow the application in the interest of justice.

3. Learned Advocate for the respondent No.2 strongly objected the application and submitted that there is no sufficient reason to allow the application. He pointed out the various litigations which were filed by this applicant in the Court of Civil Judge, Senior Division, Pusad and before Revenue Authority.

4. The respondent No.2 by filing their reply strongly opposed the application and submitted that, applicant has not stated sufficient cause for condoning the delay. The learned advocate for respondent pointed out some documents along with list produced on record i.e. copy of registered sale deed dated 04.01.2020, copy of order passed by the Additional Collector dated 20.12.2019, copy of memo of revision dated 27.01.2020, copy of order of Additional Commissioner dated 30.01.2020, copy of order passed by this Court dated 26.06.2021, copy of order of Additional Commissioner dated 29.10.2021 and copy of death certificate of respondent No.1 dated 21.08.2020.

5. The learned advocate for respondents further pointed out additional reply to the said application and pointed out some documents i.e. copy of another suit bearing No.193 of 2018 filed by applicant along with Rojnama with some other documents of revenue proceedings i.e. the proceedings filed by the appellant as per Section 257 of the Maharashtra Land Revenue Code, 1966 etc. The learned advocate for the respondents submitted that this conduct of the appellant shows that delay is deliberately caused for filing this application for restoration of appeal. It is lastly prayed to reject the application.

6. Learned Advocate for the intervenor Mr. P.A. Deshpande submits that after the second appeal was dismissed for default the suit property was purchased by the intervenor by sale-deed dated 4th January, 2020. If the application is allowed, the intervenor will suffer without

any reason, who is bona fide purchaser for value without notice. He, therefore, submitted that principle of *lis pendens* would not apply to the sale-deed of intervener.

7. Learned Advocate for the respondent No.2 and learned Advocate for the intervener submitted to reject the application for restoration considering his conduct of filing of such proceeding meanwhile.

8. The conduct of the applicant shows that he proceeded against the respondents and others in the Civil Court, Pusad, District Yavatmal as well as before revenue authority. For that they have relied upon the copies of the documents along with their reply. Perused all these documents.

9. This Court has condoned the delay of 590 days caused for filing of the application for restoration of appeal. While deciding the Civil Application (CAO) No.713/2021 this Court observed that such application shall be considered liberally to decide the civil rights and lis between the parties finally on merit. This Court has also observed that in para No.12 of the said order that no doubt the applicant had taken away all the papers of the appeal from his Advocate and remained absent. But notice was not issued to him by this Court to remain present for hearing of the appeal. On the same day on order of dismissal of appeal was passed when the appellant's Advocate was discharged from the Second Appeal No.564/2006.

10. Considering the fact that the notice was not sent by this Court to the appellant to remain present before this Court as his Advocate is discharged, it appears

that he is not at fault. No any intentional act shown that he deliberately remained absent. No doubt the applicant filed some cases in Civil Court and before revenue authorities meanwhile. But he is illiterate poor farmer. He is tribal having no knowledge of law. If his Advocate is not advising him, it is difficult for him to move such application within time. Thus, his intention to remain absent deliberately for hering of appeal is not appearing. It would be proper to allow this application in the interest of justice to decide the lis and rights between the parties on merit. Therefore, this Court is of the view that the application deserves to be restored in the interest of justice to decide their civil rights in the immovable properties on merits. The costs are not awarded to the applicant because he is poor agriculturist.

11. Considering the aforesaid reason, the application deserves to be allowed on certain conditions.

12. The application is allowed.

13. The appellant, respondents and purchaser intervener are requested to argue the second appeal within two weeks and in any case it shall be concluded on or before 23rd October, 2024. It is because the appeal is of 2006 which is 18 years of old.

14. The application is disposed.

CIVIL APPLICATION (CAO) No.78 OF 2022.

1. This is an application of the intervenor, who purchased the suit property by sale-deed dated 4th January 2020 when appeal was disissed for default.

2. Perused the application and the copy of the sale-deed dated 4.1.2020.

3. Heard learned Advocates of both sides.
4. Learned Advocate for the appellant strongly objected the application.
5. It appears that the intervenor has purchased the suit property, therefore, he is necessary party for the just decision of the appeal on merit. The application, therefore, deserves to be allowed in the interest of justice.
6. The application is allowed.
7. The applicant-Sukhdeo s/o. Ramji Natkar be added as respondent No.3.
8. Amendment be carried out on or before 9.10.2024.
9. Application is disposed of.

SECOND APPEAL No.564 OF 2006.

1. Issue notice to the respondents, returnable on 9.10.2024.
2. Mr. P.A. Deshpande, learned Advocate for the intervener (respondent No.3) waives service of notice.
3. The appellant is directed to provide a copy of the paper-book to the newly added respondent No.3 within a week.

(SANJAY A. DESHMUKH, J.)