



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

**954 CIVIL APPLICATION NO. 11781 OF 2014
IN SA/29/1990**

MARUTI HARJI SURYAWANSHI AND OTHERS

....Applicants

VERSUS

THE STATE OF MAHARASHTRA AND OTHERS

.....Respondents

Mr. Gholap D. Kale, Advocate for the applicant

Ms A. S. Deshmukh, APP for the respondent/State

Mr. V. D. Gunale, Advocate for the respondent Nos. 2-A to 2-C, 3-A & 3-B, 4-A & 4-B and 5-A

Mr. M. M. Nagargoje, Advocate for respondent Nos. 6 and 7

CORAM : ABHAY J. MANTRI, J.

DATE : 14th OCTOBER, 2025

PER COURT :

1. The applicants, the original appellants, have moved this application to condone the delay of 2323 days in filing the restoration application.

2. Heard the learned advocate for all the parties and perused the order dated 05-06-2008 and the record.

3. It is pertinent to note that the learned advocate for respondent Nos. 6 & 7 has given no objection to the restoration of the appeal. However, Mr. Gunale, a learned advocate, has strongly objected to restoring the appeal. The learned APP submitted that an appropriate order be passed.

4. It appears that since 1990, the appeal has been pending for final hearing. During the pendency of the appeal, Advocate Bapasaheb B. Jadhav expired. Similarly, applicant No. 1, who was looking after the matter, was 75 years old and suffering from many health problems. Therefore, he could not attend the court. During the pendency of this application, he also expired. Thus, on 05-06-2008, the order was passed as quoted in para 7 of this application. It reveals that the second appeal was dismissed for non-prosecution as the appellants failed to take steps to serve the respondents.

5. Considering the reasons disclosed in the application as well as facts of the case, it seems that they are sufficient; as such, in my opinion, with a view to advancing substantial justice, it would be appropriate to restore the appeal, though there is a delay of 6 years. Similarly, if the appeal is restored, it would not cause prejudice to the rights of the respondents. On the contrary, if the appeal is dismissed for non-prosecution, the rights of the appellants would certainly be affected as the same was not disposed of on the merits. *Moreover*, in my view, it would be appropriate to decide the appeal on its own merits instead of dismissing it for default for non-taking steps by the appellants.

6. It is to be taken into consideration that the appeal was dismissed in 2008, and after six years, the appellants have moved this

application. Therefore, costs need to be imposed on them for causing a delay in disposing of the matter. As a result, the civil application is allowed as prayed, subject to a cost of Rs. 15,000/-. Mr. Gunale, a learned advocate, submitted that the cost be given to the High Court Bar Association Library, Aurangabad.

7. On depositing the cost on or before 15.11.2025, the second appeal shall be restored to its original position, failing which, this order shall stand vacated.

8. List the appeal on 17-11-2025.

[ABHAY J. MANTRI, J.]

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