



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

142 WRIT PETITION NO. 13885 OF 2023

. SATWAJI S/O. BRAHMAJI ZIMBRE
DIED THROUGH LRS

1. AHILYABAI W/O. SATWAJI ZIMBRE

2. DNYANESHWAR S/O. SATWAJI ZIMBRE

3. TULSHIRAM S/O. SATWAJI ZIMBRE

4. ASHOK S/O. SATWAJI ZIMBRE

.. Petitioners
(Orig. Defendants)

VERSUS

. PARVATIBAI SARJETRAO TATHE

.. Respondent
(Orig. Plaintiff)

...

WITH

CIVIL APPLICATION NO. 13841 OF 2024

IN

WP/13885/2023

PARVATIBAI SARJETRAO TATHE

VERSUS

SATWAJI BRAHMAJI ZIMBRE DIED THROUGH LRS AHILYABAI
SATWAJI ZIMBRE AND OTHERS

...

Advocate for the Petitioners : Ms. Sawari Milind Patil
Advocate for Respondent : Mr. Rajendra Vitthalrao Dasalkar

...

CORAM : ARUN R. PEDNEKER, J.

DATE : 25.08.2025

PER COURT:

1. Heard.

2. In the present Writ Petition, the petitioners are the original defendants and the respondent is the original plaintiff.

3. The facts of the present case are that the suit is filed by the plaintiff for removal of encroachment of 40 Are land. It is stated that the present petitioners / defendants have encroached upon the said 40 Are land belonging to the respondent / plaintiff. The suit is decreed in favour of the respondent / plaintiff and the appeal was filed bearing RCA No.66/2011, which was dismissed on 23.03.2015, for want of prosecution. Thereafter, an application was filed for restoration of the appeal on 01.03.2016, which ought to have been filed on 22.04.2015 and that there is delay of 10 months 7 days and, accordingly, application for condonation of delay was also filed alongwith an application for restoration. Thereafter, after filing of the application in the intervening period the original defendant has expired on 23.10.2016. Thereafter, an application was filed for bringing the legal heirs of the original defendant on record on 23.01.2017, which was allowed on 24.09.2021. However, the order dated 24.09.2021 was not complied with. Thereafter, an application was filed to take steps to bring the legal representatives of original defendant on record, as such, another application was moved on 15.12.2022 to permit them to comply with the earlier orders for bringing the legal representatives on record. The same

was also allowed. Thereafter, amendment was carried out in the petition on 23.12.2022 and the amended copy of the petition was filed on 11.04.2023.

4. From perusal of the record, it appears that there was 10 months 7 days delay in filing the application for restoration of appeal. The learned counsel for the petitioners submits that the matter pertains to immovable property and the petitioners valuable rights are involved. She also submits that at the relevant time when the appeal was listed for hearing that the original defendant has engaged the Advocate, however, the Advocate could not remain present in the matter at the relevant time as he was engaged in other matter. She also submits that the message was given to the original defendant by the Advocate about hearing of the said appeal, however, the same was not received by the original defendant as he was out of station for his earning and livelihood and on returning thereafter the original defendant immediately contacted the learned Advocate and thereafter the application for restoration of the appeal was filed and the delay is caused of 10 months 7 days. The appellate court has rejected the application for restoration on the ground that necessary details are not provided in the application i.e. it is not stated that when the original defendant went out of town and on what date or period he returned. The grounds of delay were are not satisfactorily

explained. The original defendant failed to explain the delay, as such, the delay condonation application was rejected. Consequently, the application for restoration was also rejected.

5. The learned counsel for the petitioners further submits that considering the grounds, the delay condonation application be allowed and the appeal be restored as the valuable rights of the petitioners / defendants are involved.

6. Per contra, the learned counsel appearing for the respondent / original plaintiff submits that the decree is of the year 2011 and, on account of delay, which has occurred; as the appeal was not diligently proceeded, the appeal itself was dismissed. Thereafter, the application was filed for restoration of the appeal along with delay condonation by giving Advocate's reasons. Thereafter, on account of various intervening facts, 7 to 8 years has passed, as such, he submits that delay may not be condoned.

7. Considering the rival submissions and considering the fact that there is delay of 10 months 7 days and that the petitioners / defendants valuable rights would be lost without adjudication on merits, this court would be inclined to condone the delay, however, on costs. Considering that the right of appeal may be lost, delay is condoned and the appeal is restored to its original position, subject

to the costs of Rs.10,000/- to be paid to the respondent / original plaintiff.

8. It is further directed that the appellate court shall decide the appeal within a period of eight (08) months from the date of receipt of the order of this court.

9. The Writ Petition, accordingly, stands disposed of.

10. In view of disposal of the writ petition, Civil Application No.13841 of 2024 also stands disposed of.

[ARUN R. PEDNEKER, J.]

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