

MJ Jadhav

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
INTERIM APPLICATION NO. 17094 OF 2023
WITH
INTERIM APPLICATION NO. 17092 OF 2023
IN
SECOND APPEAL NO. 232 OF 2007**

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Satyawan Baburao Patil Since Deceased ... Appellant
Through His Heirs

vs.

Janardan Jagannath Chavan ... Respondent

Mr. Kunal Shrigire i/b Vikas Kolekar for the Appellant.

CORAM : GAURI GODSE, J.

DATED : 29th JANUARY 2025

ORDER:

INTERIM APPLICATION NO. 17094 OF 2023 :

1. This application is for recalling of order dated 7th August 2007 and for restoration of the second appeal. The application is filed after a period of 16 years.
2. Learned counsel for the applicants submits that the reasons for condonation of delay are explained in paragraph no.6 of the application. He therefore submits that the considering the illness of the original appellant and his subsequent demise, applicants were unable to take any steps. He submits that the applicant no.1 was

only 21 years at the time of the death of the original appellant. Hence, he was unable to take any steps to comply with the liberty granted by this Court in order dated 7th August 2007. He therefore submits that the delay is unintentional. He thus submits that the delay in filing the present application be condoned and the appeal be restored to be heard on merits.

3. I have perused the papers of the application. The second appeal was heard on 12th July 2007. This Court in order dated 12th July 2007 observed that the plaintiff, i.e. original appellant had not filed any suit for declaration of title. This Court also observed that the view taken in the judgment impugned in the second appeal was a correct view. By order dated 12th July 2007, this Court granted time to the appellant to file an application for amendment of the pleadings in view of the submissions made on behalf of the appellant.

4. In view of the time granted to file an appropriate application for amendment of the pleadings, Civil Application No.982 of 2007 was filed by the appellant. However, the said application was withdrawn on 7th August 2007 with liberty to file a fresh application.

5. This Court granted conditional time of two weeks to file appropriate application with a further observation that failure to file

any such application, the second appeal shall stand dismissed without further reference to the Court. Since no application was filed within time granted, the second appeal stood rejected.

6. The present application is filed with the prayer for condonation of delay and recalling order dated 7th August 2007. However, there is no application filed in terms of the liberty granted by this Court vide order dated 12th July 2007 read with order dated 7th August 2007. Thus, the present application filed simplicitor for restoration of the second appeal cannot be entertained. I do not see any reason to take a different view, than the view taken by this Court as recorded in order dated 12th July 2007.

7. In view of the aforesaid, there is no reason to recall order dated 7th August 2007. The reasons for condonation of delay of 16 years is not justifiably explained in the application. Hence for want of any justifiable reason, huge delay of 16 years cannot be condoned.

8. Hence, the Interim Application is dismissed.

(GAURI GODSE, J.)