

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

INTERIM APPLICATION NO. 640 OF 2025

IN

FIRST APPEAL NO. 1579 OF 2003

Kokan Railway Corporation Ltd. ...Applicant/Appellant

Versus

Mavura Bandiwadekar ...Respondent

Ms. Asha M. Bhambwani for Applicant/Appellant.

Mr. B. G. Tangoli for the Respondent.

Coram : Sharmila U. Deshmukh, J.

Date : 5th May, 2025.

P. C. :

1. Interim Application has been preferred seeking recall of order dated 18th July, 2018 by which the Appeal came to be dismissed for non-deposit of paper book charges within a period of four weeks and for condonation of delay of 6 years and 89 days caused in preferring the present Application.

2. Learned counsel appearing for Applicant submits that Applicant was not aware of order dated 18th July, 2018 and subsequent dismissal of First Appeal. She submits that it is only when the notice was issued by the Executing Court in 2023, that the conditional order came to the knowledge of the present Applicant. She would further submit that in

the meantime, there were talks of amicable settlement of matter by reason of which no steps were taken for the purpose of restoration of Appeal. She submits that compensation amount was deposited in the Reference Court and the Claimants had withdrawn certain portions of the said amount.

3. The said Application is opposed by learned counsel appearing for Respondent-Original Claimant submitting that litigation is pending since the year 1995 and Claimants have not received the remaining compensation. He would further submit that no stay should be granted as after the land was acquired in the year 1995, the entire amount of compensation has not been received by the Claimant.

4. The subject-matter of the present Appeal is the enhancement of compensation which was granted by the Reference Court. It is not disputed that some portion of compensation was withdrawn by the Claimant. The present Application is concerned with the issue of recall of order dated 18th July, 2018 which dismissed the Appeal for non-deposit of paper book charges within a period of four weeks time. It is specific pleading that due to inadvertence, the said amount could not be deposited. For the default on the part of Advocate, the litigant could not be made to suffer. It is also not demonstrated that the said dismissal was to knowledge of the Applicant, therefore, the explanation which has been tendered that the knowledge was acquired

in the year 2023 upon receipt of notice from the Executing Court is sufficient and is required to be accepted.

5. For the reasons stated in Application, delay of 6 years and 89 days stands condoned. The conditional order dated 18th July, 2018 passed by Registrar (Judicial-II) is recalled. First Appeal is restored to file.

6. As the First Appeal is restored to file, the Interim order of 16th January, 2004, modified by order dated 16th April, 2004 stands revived.

7. Liberty to mention the First Appeal for expeditious hearing after vacation.

[Sharmila U. Deshmukh, J.]