

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

INTERIM APPLICATION NO. 8498 OF 2024.

IN

FIRST APPEAL NO. 792 OF 2014.

Mahesh Rajaram Vaity @ Bhandari and
Others

...Applicants/Appellants.

Versus

Jaishree W/o Hareshwar Bhandari and
Another

...Respondents.

Mr. P. M. Havnur, Mr. Sanjay Kharat and Mr. Shreyas Choudhari for Applicants.
Mr. Abhishek Patil for Respondent.

Coram : Sharmila U. Deshmukh, J.

Date : 20th February, 2025.

P. C. :

1. At the outset, learned counsel appearing for Applicants seeks leave to amend to delete prayer clause 'c' and file an appropriate Application separately.
2. Leave granted. Amendment to be carried out forthwith.
3. Interim Application has been preferred seeking recall of conditional order dated 6th April, 2015 passed by Registrar (Judicial-II) granting four weeks time for payment of Bhatta charges and furnishing copies, failing which the Civil Application along with the First Appeal to

stand dismissed and order dated 21st April, 2022 granting three weeks time to remove the office objections, failing which registration of Civil Application (Stamp) shall be refused without further reference to the Court.

4. As there was non-compliance of the said order, conditional order came into effect and Civil Application and First Appeal came to be dismissed.

5. Learned counsel appearing for Applicant submits that Applicants had entrusted the matter to their erstwhile Advocate, who failed to take any steps by reason of which, the Application as well as the Appeal came to be dismissed, and it is only when an inquiry was made regarding the status of the Appeal that they became aware of the dismissal.

6. He would further submit that for period of almost seven years, Civil Application did not come up for hearing and thereafter, appeared on the Board of Registrar (Judicial-II), and conditional order was passed. He would submit subsequently, the erstwhile Advocate handed over the papers to the Applicant, and present Application came to be filed.

7. Learned counsel appearing for Respondent opposes the Application and would submit that order of 2015 was passed in Civil Application No. 2379 of 2014, which was for non-payment of Bhatta

charges, which came to be dismissed and thereafter, Civil Application, which was filed for restoration was dismissed for non-removal of office objections. He submits that there is persistent default on part of Applicant and there is delay of almost seven years and seeks dismissal of the Civil Application.

8. From the record, it appears that on 6th April, 2015 though four weeks time was granted for payment of Bhatta charges and furnishing copies, the same was not done resulting in dismissal of the Appeal and subsequently in the year 2022, when time was granted for removing the office objections, the same was not done resulting conditional order to come into effect. It cannot be debated that it is a duty of the Advocate-on-record to ensure that office objections are removed and Bhatta charges are paid within time so that registration of Civil Application and Appeal is not denied. The Applicants who are laymen would not be aware of procedure which is required to be followed and for default on the part of Advocate, the litigant cannot be made to suffer.

9. In light of the above, the delay of about two years in preferring the present Interim Application stands condoned and conditional order dated 6th April, 2015 and 21st April, 2022 stands recalled. First Appeal No. 792 of 2014 and Civil Application No. 2379 of 2014 stands restored to file.

10. The office objections be removed within a period of three weeks from today.

[Sharmila U. Deshmukh, J.]