



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

INTERIM APPLICATION NO. 1296 OF 2025
IN
CIVIL APPLICATION (ST) NO. 25544 OF 2017
IN
FIRST APPEAL NO. 934 OF 2014

Mrs. Minal Bhavnesh Gandhi and Ors. ... Applicants.

In the matter between:

Mrs. Minal Bhavnesh Gandhi and Ors. ... Appellants.

Versus

Prithvi Vallabh Balchandra Rawat ... Respondent.

AND
FIRST APPEAL NO. 934 OF 2014

Mrs. Minal Bhavnesh Gandhi and Ors. ... Appellants.

Versus

Prithvi Vallabh Balchandra Rawat ... Respondent.

Mr. Anosh Sequera a/w. Vasim A. Shaikh i/by Pravin Mehta and Mithi & Co. for the Applicants.

Mr. Kantilal H. Kanojia a/w. Ms. Jyoti A. Kanojia for the Respondent Nos.1 and 2.

Coram : Sharmila U. Deshmukh, J.

Date : January 30, 2025

P. C. :

1. Interim Application has been preferred seeking restoration of the Civil Application (Stamp) No.25544 of 2017 dismissed for non removal of the office objection within time.
2. The Civil Application was preferred for setting aside the order

of dismissal as against Respondent Nos.4 to 6.

3. On 2nd July, 2018, Registrar (Judicial-II) had granted three weeks time to remove the office objection which was extended on 21st July, 2018 and 24th July, 2018. Despite thereof, the office objections were not removed by reason of which the Civil Application came to be dismissed.

4. Learned counsel appearing for the Applicants submits that the Advocate on behalf of the Advocate's firm, who was attending the matter left the Advocate's firm at the end of July, 2018. Due to inadvertence the conditional order passed by the Registrar (Judicial II) was not noticed and consequently on 21st August, 2018, none appeared for the Applicants and no steps were taken for removal of office objection and consequently the Application came to be rejected by order of 21st August, 2018. He submits that subsequently on 27th September, 2024, the First Appeal was listed before this Court when time was sought by the Applicants' Advocate, as they were unable to trace the papers and proceedings which were of the year 2014 and thereafter, the papers were called for from the Appellants and it was noticed that the Civil Application has been dismissed due to the conditional order. He further submits that as the office objection was not removed due to oversight and there is sufficient explanation for condoning the delay of 1577 days caused in preferring the Interim Application and

time may be given to remove the office objection by restoring the Civil Application.

5. *Per contra*, learned counsel appearing for the Respondent would submit that the Applicants were well aware of the pendency of the present proceedings and it was their duty to ensure that all steps are taken. He submits that non removal of office objection amounts to negligence on part of the Applicants, and no explanation much less sufficient explanation has been tendered for condoning the delay for filing of the present Application. He draw supports from the decision of the Apex Court in the case of ***Pathapati Subba Reddy (died) By L.Rs. and Ors. vs. The Special Deputy Collector (LA)*** reported in ***[2024 INSC 286]*** where the Apex Court has held that in case of no sufficient cause been shown for condoning the delay, without any justification, putting any condition whatsoever, tantamounts to showing utter disregard to the legislature. He submits that the explanation tendered is not sufficient and therefore, the Application is required to be dismissed.

6. I have considered the submissions and perused the record.

7. Interim Application has been preferred seeking restoration of Civil Application which has been dismissed due to the conditional order passed by the Registrar (Judicial II). By order of 2nd July, 2018, time was granted which was extended till 24th July, 2018 and as

there was non compliance of the said order, the registration of the Civil Application stood dismissed.

8. Once the litigant has entrusted the matter to the Advocate, it is the duty of the Advocate to ensure that timely steps are taken for the registration of the Application and all compliances of the judicial orders are made. In the present case, it is specific pleadings of the Applicants that the default is on part of the Advocate's firm as the Advocate, who was attending the matter on behalf of the Advocate Firm, had left the services of the firm at the end of July, 2018 and by inadvertence and oversight while handing over the papers, no instructions with respect to removal of office objection was given by the concerned Advocate, resulting in non-appearance on 21st August, 2018 and the conditional order being passed. As none had appeared on behalf of the Advocate's Firm on 21st August, 2018, the Applicants were not aware of the conditional order which came in effect after a period of four weeks. Though it cannot be disputed that the law of limitation is required to be applied even if harsh, in the present case, it needs to be noted that it is a default on part of the Advocate's Firm which has resulted in dismissal of the Civil Application. For the default on part of the Advocates, the litigant cannot be made to suffer particularly when it is not shown that during the pendency of the proceedings, the Applicant has been negligent. The duty of removal of office objection is upon the

Advocate and not the litigant and therefore, the litigant cannot be termed as negligent in proceeding with the matter.

9. For the reasons stated in the Application, the Interim Application is allowed subject to cost of Rs.10,000/- to be paid to the Kirtikar Law Library within a period of two weeks from today.

10. Civil Application (Stamp) No.25544 of 2017 is restored to file subject to payment of cost as directed above.

11. Stand over to **13th February, 2025.**

[Sharmila U. Deshmukh, J.]