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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
INTERIM APPLICATION NO. 2062 OF 2025
IN
SECOND APPEAL NO. 28 OF 2016**

Jagdish Harihar Shetty ... Applicant

Vs.

Anand Govind Karande ... Respondents
and Smt Bakula Anand Karande
since deceased through LRs.

Mr. Uday Warunjikar i/b. Mr. Meenal Deshmukh for the
Appellant/Applicant.

Mr. Vijay Vasant Nene for the Respondents.

CORAM : GAURI GODSE, J.

DATE : 21st JANUARY 2026

ORDER :

1. This interim application is for restoration of the second appeal which was dismissed for non-prosecution on 25th January 2024. Learned counsel for the applicant submits that the earlier Advocate who was appearing in the second appeal was unable to attend the matter on 25th January 2024 due to oversight.

Thereafter, the appellant has appointed new Advocate and this application for restoration of the second appeal was filed on 7th August 2024.

2. Learned counsel for the applicant submits that after the applicant learnt about the order of dismissal, he appointed a new Advocate and this application for restoration was filed. Learned counsel for the applicant submits that delay in filing the application is unintentional and after knowledge about dismissal of the appeal immediate steps have been taken by the applicant by filing application for restoration.

3. Learned counsel for the respondents submits that initially while issuing notice in the second appeal this court has granted stay to the execution. Thereafter, ad-interim stay was continued till 11th April 2017. However, the same was not continued thereafter. He submits that the suit was dismissed, however the first appellate court decreed the suit for possession on 14th August 2015. Since the ad-interim stay was not continued respondent filed execution proceedings. He submits that in execution proceedings the applicant requested for time on the ground that

the second appeal is pending and there is an order of stay. Since the continuation of stay order was not produced before the executing court, the applicant had submitted before the executing court that if an order of stay is not produced the applicant would submit to the orders passed by the executing court. He therefore submits that application for restoration is only filed with an intention to delay the execution of the possession decree in favour of the respondent. He therefore opposes restoration of the second appeal.

4. This court while issuing notice to the respondents in second appeal had granted ad-interim stay to the execution of the possession decree. The appeal has been listed before the court on various dates, however it was either adjourned or next date was assigned due to paucity of time. In all the orders where the next date was assigned due to paucity of time, the ad-interim relief granted earlier have been continued till the next date. Hence, if all the orders are perused, it appears that the ad-interim relief stands extended.

5. So far as non-appearance for the appellant on the date

when the appeal was dismissed for non prosecution is concerned, the applicant has explained in the application that due to oversight earlier Advocate could not remain present when the appeal was called out.

6. In view of the reasons stated in the application, it does not appear that there is a deliberate attempt not to appear on the day when the second appeal was dismissed for non-prosecution.

7. Hence, for the aforesaid reasons delay is condoned and the application is allowed in terms of prayer clause (a).

[GAURI GODSE, J.]