

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

INTERIM APPLICATION NO. 234 OF 2026

IN

FIRST APPEAL NO. 1018 OF 2017

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Rashmi N. Shah

....Applicant/Appellant

Versus

Jayantilal Sakariya,

Sole Proprietor of Bhawesh Jewellers & Ors.

....Respondents

Mr. Vivek Sharma a/w. Mr. Arnold Fernandes for the Applicant/Appellant.

Mr. Kalpesh J. Nansi for Respondent No.1.

CORAM : JITENDRA JAIN, J.

DATED : 11th MARCH 2026

P. C. :

1. This application is taken out for restoration of First Appeal No. 1018 of 2017 and Civil Application No. 2805 of 2017, which was dismissed for non-payment of bhatta charges. There is also a delay of 1530 days in taking out the Interim Application. The said delay is being counted from the day when the appeal came to be dismissed for non-payment of bhatta charges.

2. The present application is filed by the original defendant no.3. In 2002, money recovery suit was filed by the plaintiff against the defendants. The said suit was decreed on 10th February, 2017 and appeal against the said order was filed in this Court, which came to be admitted by an order dated 17th October, 2019. In the said order, it was stated that, private paper-book should be filed within one year, failing which, the appeal shall stand dismissed without recourse to the Court.

3. The period of one year for filing the private paper-book expired on 17th October, 2020, by which time, Covid Pandemic had already hit the world. The Hon'ble Supreme Court suo moto extended the period of limitation from time to time and was last extended up to 31st March, 2022.

4. The plaintiff filed an Execution Application for enforcement of the Trial Court's order. The said Execution Application was listed on 20th June, 2023. Mr. Sharma, Advocate for defendant no.3 and Mr. Shah, husband of defendant no.3 were present. On 11th December, 2024, Mr. Sharma sought time for filing vakalatnama on behalf of defendant no.3 before the Executing Court. It is at this point of time, when the Execution Application was being heard, Advocate for defendant no.3 realised that the appeal has already been dismissed for non-payment of bhatta charges. Thereafter, the present application was filed in March 2025 for restoration of the Interim Application, Civil Application and also for condonation of delay.

5. I have heard Mr. Sharma, learned counsel for original defendant no.3 and Mr. Nansi for the original plaintiff. Mr. Nansi strongly and vehemently opposes the present application and has also filed a reply, which is taken on record.

6. Admittedly up to March 2022, on account of Covid, the period cannot be considered for the purpose of delay. Thereafter, the earliest defendant no.3 was aware or should have been aware about the status of the appeal was in 2023 when the Execution Application was heard and defendant no.3 was represented. However, due to inadvertence of the Advocate for defendant no.3, he did not inquire about the status of the appeal filed before this Court. It was only when the Executing Court matter progressed substantially that the Advocate for defendant no.3, on inquiry, realized that the appeal has been dismissed for non-payment of bhatta charges.

7. Mr. Sharma, learned counsel for defendant no.3 who is also appearing in the present application has fairly admitted that it was because of him the delay was caused in ascertaining the status of the appeal and non-payment of bhatta charges was purely inadvertence on his part and in making the present application.

8. In my view, the reason given by the learned Advocate for defendant no.3 requires to be accepted. The said explanation given is accepted and, therefore, dismissal of the appeal and civil application merely on the ground of non-payment of bhatta charges is restored by condoning the delay in filing the present application.

9. The said restoration and condonation is subject to payment of cost of Rs. 25,000/- to the original plaintiff. The said cost should be paid within a period of four weeks from today, failing which, the present order will stand withdrawn.

10. Interim Application No. 234 of 2026 is disposed of in above terms.

11. List the restored First Appeal No. 1018 of 2017 and Civil Application No. 2805 of 2017 on 22nd April, 2026.

[JITENDRA JAIN, J.]