

:: Order passed below Exh. 63 Reg. Civil Suit No. 05/2011 ::

01. By this application, the plaintiffs are seeking to condone the delay caused in filing the application for restoration of suit against defendant Nos. 1, 3 and 4.

02. As per the contention of the plaintiffs, on 08-12-2012 the suit was posted for taking steps against defendant Nos. 1, 3 and 4. However, as they could not take necessary steps, matter came to be dismissed against these defendants. They have further contended that, their previous advocate did not inform them about the dates of the suit nor has taken any steps. This fact was revealed to them by their present advocate and accordingly, they have filed the application for restoration of the suit as against the defendant Nos. 1, 3 and 4. However, the delay of 05 years, 05 months and 17 days is caused for filing that application, which needs to be condoned.

03. The defendant No. 1 has placed is no objection for condoning the delay. The defendant Nos. 2 and 3 have failed to file their say. The defendant Nos. 4 and 5 by filing their say at Exh. 79, resisted the application by contending that, the suit was decided and is remanded by the order in the appeal preferred by the defendant No. 5. Therefore, at this juncture, the application for condonation for delay is not maintainable.

04. Heard. Perused record. Perusal of record shows that, on 08-12-2012 the suit was dismissed as against defendant Nos. 1, 3 and 4 as the plaintiff failed to take necessary steps against them. However, it is a fact on record that, in view of the order in Reg. Civil Appeal No. 16/2015 dated 03-01-2017, by setting aside the Judgment and decree dated 05-05-2014, this suit is remanded for fresh trial and for giving an opportunity of cross-examination of plaintiffs and their witnesses. This circumstance itself shows that, the matter is remanded for fresh trial. Accordingly, in order to adjudicate the matter on merits and by giving opportunity to all concerned, it would be just and proper to condone the delay caused in filing the application for restoration of suit as against defendant Nos. 1, 3 and 4. Hence, following order.:

:: O r d e r ::

- 1) The application is allowed subject to cost of Rs.

2,000/- (Rs. Two Thousand only), half of which to be deposited in Court for State and rest be distributed between defendant Nos. 4 and 5 equally.

2) Cost condition precedent.

Sd/-

(D.P. Kasat)

Civil Judge Jr. Division

Deoni.

Date : 02-12-2017.

I affirm, the contents of P.D.F. file Order are correct word for word as per the original Order.

Name of the stenographer : M.Y. Wadiwale.
Name of Court : Civil Court, Jr. Divn., Deoni.
Date : 02-12-2017.