

IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
BENCH AT AURANGABAD

CIVIL APPLICATION NO.12944 OF 2016 IN
CIVIL APPLICATION NO.1047 OF 2015 IN
SECOND APPEAL NO.115 OF 2016

Vishal s/o Shamrao Kandekar & ors. ...APPLICANT

VERSUS

Devidasrao s/o anandrao Deshmukh ...RESPONDENTS

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Shri S.S. Wagh, Advocate for applicants
Shri G.S. Syed, Advocate holding for
Shri M.S. Deshmukh, Advocate for non-applicant .1
Shri D.K. Rajput, Advocate for respondents No.11, 12, 15 & 16
Shri D.K. Dagadkhair, Advocate for respondent No.21

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CORAM: A.M. DHAVALÉ, J.

DATED : 27th November, 2018.

ORAL ORDER :

1. Heard Mr. S.S. Wagh, learned Advocate for the applicants in Civil Application No.12944/2016.

2. In this case, First Appeal was dismissed on 2.4.2011. The aggrieved 14 defendants had filed Review Petition on 18.2.2012 i.e. after a period of 10 months. It was decided on 11.3.2014. The certified copies were obtained on 15.4.2015 and thereafter Civil

Application No.1046/2015 is filed by defendant No.1 for condonation of delay in preferring the Second Appeal. The prayer clause (B) reads as under :

“(B) Condone delay of 191 days in filing Second Appeal against judgment and order passed in Regular Civil Appeal No.38/2011 by learned District Judge-3, Aurangabad and MA.R.J.I. (Review Petition) No.90/2012 by Adhoc District Judge-, Aurangabad dated 11/3/2014.”

3. Learned Advocate Mr. S.S. Wagh submits that, on 15.1.2016, following order was passed by brother Judge (Sunil P. Deshmukh, J.) :-

“Civil Application, for the reasons contained therein, is allowed in terms of prayer clause “B” and stands disposed of.”

4. Learned Advocate Mr. Wagh points out that, when this order was passed, the respondents were not served while Mr. G.R. Syed, learned Advocate submits that, they were served through paper publication. Mr. Wagh disputes that paper publication was before passing the impugned order. Besides, on merits, Mr. Wagh submits that, the delay was not of 191 days, but it was for a period of

3 years and 8 months. This fact was not considered and the order shows condonation of delay of only 191 days. But at the same time, the Second Appeal has been numbered. He is aggrieved by the above order and since he was not heard, this order should be recalled.

5. Mr. S.S. Wagh relied on the following judgments :

- (i) Margret Almeida & ors. Vs. Bombay Catholic Co-op. Housing Society Limited & ors. [2012 AIR SCW 1626], (para No.7)
- (ii) Krishnasami Panikondar Vs. S.R.M.A.R. Ramasami Chettiar [(1918) 20 BOMLR 541].
- (iii) Subhash Chander Vs. Shri Bodh Raj and another [AIR 1969 Jammu & Kashmir 8].

6. Since the impugned order is passed by brother Judge (Sunil P. Deshmukh, J.), the judicial propriety requires that this application for recalling the said order be placed before the same Court for arguments and appropriate orders. Hence, Registrar (Judicial) is directed to take necessary steps.

(A.M. DHAVALÉ)
JUDGE