



**IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION**

CIVIL APPEAL NO..... OF 2025
(Arising out of S.L.P.(C) No.22195 of 2025)

**M/s. SETHIA INFRASTRUCTURE
PVT. LTD.**

... Appellant (s)

VERSUS

**MAFATLAL MANGILAL
KOTHARI AND ORS.**

... Respondent(s)

J U D G M E N T

Rajesh Bindal, J.

1. Leave granted.
2. The present appeal arises out of an order dated 25.10.2023, passed by the High Court¹ in Interim Application No. 19020 of 2022 in First Appeal² filed by the respondent Nos. 1 and 2. By the aforesaid order, the High Court condoned huge delay of 5,250 days in filing the

Signature Not Verified
Digitally signed by
POOJA SHARMA
Date: 2025.08.14
16:32:06 IST
Reason:

¹ High Court of Judicature at Bombay.
² First Appeal No. 1483 of 1988.

application for restoration and directed the restoration of the first appeal for decision on merits that too in the absence of the non-applicants, just noticing that their private service is complete in view of an affidavit filed by the applicant.

3. The first appeal was deemed to be dismissed for non-prosecution on 20.05.2008 as per order dated 20.02.2008, passed by the High Court, mentioning that in case the compilation of pleadings is not filed within three months, the appeal shall stand dismissed for non-prosecution without further reference to the Court. The period of three months was counted from 20.02.2008.

4. Much facts are not required to be noticed as the challenge in the present appeal is to an order passed by the High Court *vide* which delay of 5,250 days in filing the application for restoration was condoned.

5. The *lis* started with the filing of a suit by respondent Nos.1 and 2 seeking eviction of the defendants from the property in dispute.

6. The suit³ was dismissed *vide* judgment and decree dated 07.07.1988. An appeal⁴ was filed by the plaintiff in the original suit

³ Original Suit No. 289 of 1967

⁴ First Appeal No. 1483 of 1988

against the judgment and decree of the Trial Court. As is available from the synopsis, the appeal was admitted on 07.03.1989. The aforesaid appeal was listed before the High Court on 20.02.2008, when the following order was passed:

“1. If compilation of pleadings is not filed by the appellants within a period of three months from today, the Appeal will stand dismissed non-prosecution without further Court for reference to the Court. ”

7. As there may have been non-compliance of the direction to file the paperbook, the appeal stood dismissed for non-prosecution three months after the passing of the aforesaid order.

8. The application for restoration of the appeal was filed by the respondent Nos. 1 and 2 along with the prayer for condonation of delay of 5,250 days in filing the application.

9. As is evident from the impugned order passed by the High Court, the non-applicants are shown to be served by private service in view of the affidavit filed on record. The order is reproduced hereinbelow:

“1. It appears that respondents are duly served by private service in view of affidavit of service filed on record dated 29th March 2023 and 17th August 2023.

2. For the reasons stated in the application and in view of the ratio in (2008) 11 S.C.R. 1, application is allowed in terms of prayer clause (a).”

10. It has also come on record that after the appeal was dismissed on account of non-prosecution, certain third party rights have been created in the property in dispute. We are not dilating much on these facts as they are not relevant at this stage.

11. On a perusal of the impugned order passed by the High Court on 25.10.2023, it is evident that in the absence of representation of the non-applicants, huge delay of 5,250 days in filing the application for restoration was allowed and no reason was assigned.

12. We may only observe that when a Court is dealing with an application for restoration of any matter which is dismissed for non-prosecution and the application for restoration is filed after huge delay, the Court must be cognizant of the fact that time does not stand still. Whenever delay of a long period of time is sought to be condoned, the Court should not rule out involvement of third parties in the litigation. In fact, the Court must presume that third party rights may have been created and/or additional parties may have developed rights and interest in the litigation.

13. In the present case, it *prima facie* seems that respondent has woken up from his 'alleged slumber' as the respondent has much to gain inasmuch as the appellant/developer has stepped in and is carrying out construction at site on a mega scale.

14. In our view, the impugned order passed by the High Court cannot be legally sustained. The same is accordingly set aside. The appeal is accordingly allowed. The matter is remitted back to the High Court. Consequently, the application for condonation of delay shall be decided afresh after hearing the appellant/developer, who claims to have started developing the suit property during the time period the appeal remained dismissed. If need be, it may be impleaded as party.

15. The parties, through their respective advocates, are directed to appear before the High Court on 02.09.2025 and the matter be listed as per roster.

16. Pending applications, if any, stand disposed of.

.....J.
(RAJESH BINDAL)

.....J.
(MANMOHAN)

NEW DELHI;
AUGUST 14, 2025.