

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
INTERIM APPLICATION NO. 13352 OF 2025
IN
SECOND APPEAL (ST) NO. 33591 OF 2025

Smt. Tarabai Anandrao Mulik

Since Deceased & Anr.

... Applicants

Versus

Smt. Archana Fattasing Mulik & Ors.

... Respondents

Ms. Nisha N. Valani *for Applicants.*

None for Respondents.

CORAM : SANDEEP V. MARNE, J.

DATE : 13 OCTOBER 2026.

P.C. :

1) This Application is filed seeking condonation of delay of 2 years and 207 days in filing Second Appeal against the Judgment and Order dated 14 December 2022 passed by the Adhoc District Judge-2, at Baramati, District Pune.

2) I have heard Ms. Valani, the learned counsel appearing for Applicants and have considered the submissions canvassed by her.

3) The delay sought to be condoned is inordinate and runs into 2 years and 207 days. This Court enquired with Ms. Valani as to the justification pleaded for condonation of such inordinate delay. She has

drawn my attention to averments made in paragraph Nos. 8 to 11 of the Interim Application, which read thus:

8. After the said minutes of order dated 17th february 2020. Smt tarabai executed a will in favour of her son, appellant no2 hear in, shriashok Anand rao mulik whom she bequeathed a share of 25 gunta approximately and remaing her shares she Bequated in favor of shri jaydeep ashok mulik S/O ashok mulik being a co appellant hear in on 17 december2021. The said will is registered at Baramati. Appellants state that after the Execution of the said wills the mother of the appellant no2 Smt tarabai Expired on 28 December 2021.

9. Appellants state that during the pending proceeding for deciding the shares of the of all the parties before the lower appellate tribunal appellants has given the copy of the will and death certificate to his advocate shri. raje S. mulik who has bought to the notice of the execution of the will of late smt.tarabai as per her shares given in the said minutes of order dated 14th December 2020. Infavor of the appellants and his son, jai deep mulik by way of pursis dated 11.04.2022 and application dated 04.05.2022.the said application was taken on record, and numbered as exhibit 39.but the trial appellate court failed to consider the said documents on record for the purpose of calculating the shares of Smt Tarabai mulik on record and passed the order of distribution of the property and order the partitioned of the property on22December 2022 by the impugned order respondents no1 &2 were given more shares including the 1/3 shares of smt. Tarabai.

9A. The Appellant state and submit that Res.No.7 as per para six of the impugned order dated 14/12/2022 is stated that Respondent No.7 is not concern with suit property. They have only join as for giving the information about crop details. There is no releif claim against this Resp.No.7 hence therefore in the order suit dismissed against the Respondent No.7.

10. Hence the Appellants are filing the present second Appeal along with interim application for condonation of delay.

11. Appellants say that impugned order dated 4th December 2022 passed by the appellant tribunal without considering the will of smt. Tarabai for the distribution of the property,said facts was not aware by the appellant no2&3 as appellants being lay man being Agriculturist total rely upon his advocate, and there advocate also did not inform the said facts to the appellants. After the date of the said order several dates were going on but no order came to be passed by the appellant's tribunal court on exhibit 39.As per the will of late smt tarabai mulik as per exhibit 39. Neither pursis nor application decided appellants say that appellants advocate did not informed the said facts to the appellants till now Now since the matter came up under the execution therefore appellant

approach his present Bombay advocate for seeking advice and present advocate after going through all the papers including minutes of meetings in terms of settlements between the parties in the second appeal and thereafter subsequent events of death of smt. Tarabai mulik and her will in favour of appellant no2 and his son3 after going through all the record and papers appellants came to know that appellants share was not consider by the trial court as per the will of late smt Tarabai A. smt. Tarabaimulik. and share is given in favour of Respondent Nos 1 & 2 by adding the share of late smt Tarabaimulik. immediately appellant advocate informed them to applied the certified copy of entire papers and proceedings to see what happened to the application submitted before the trial appellate tribunal in respect of the will of tarabaimulik.being exhibit 39 as per the advice of the present advocate appellants applied for certified copies of the entire proceedings through there trial court advocate on 6th august The certified copies was received by the appellants on 11th August 2025 thereafter appellants has courier the said papers and preceding's to the Bombay high court and sough the advice to filed the appeal before this honorable court for depriving the share of appellant and co. appellant asper the will of Smt. Tarabai Mulik. hence present advocate has prepared present second appeal with condonation of delay in view of the above circumstance. There is a delay in filing the present appeal the delay is not deliberate and intentional appellant being layman not having legal knowledge and mistake and or over look on the part of the trial court for not considering the will of Smt. Tarabai being exhibit 39 while passing the order of distribution of property and no information on the part of trial court advocate to the appellant, appellants should not suffer. Appellants having a good case and in view of will of Smt. Tarabai A. mulik and in view of minutes of order Passed in second appeal Appellants shall not deprive the shares of smt tarabai Mulik as per the will. In view of all the circumstance the delay is required to be condoned, in the interest of justice. And appeal be heard on merits. Hence Appellants pray as follows:

- A. That the 2 Years 207 days delay in filing the second appeal.
- B. That the present interim application be allowed.
- C. Any other reliefs as this Hon'ble Court may deem fit and proper.

4) Thus, in paragraph Nos. 8 to 11 of the Interim Application, Applicants are mainly raised averments relating to merits of the dispute. Beyond stating that Appellants are laymen and are agriculturists who relied upon their Advocate, there is no positive averment in the application that the Applicants did not have knowledge about passing of the impugned decree dated 14 December

2022. It appears that the application for a certified copy was made on 6 August 2025 i.e. after expiry of more than two and half years of passing of the decree by the Appellate Court. Applicants thus had knowledge of the decree but got convinced about need to file the appeal only when their advocate demonstrated alleged errors in the decree. The time taken by the Appellant in getting convinced about need to file the appeal cannot be condoned. If the averments in paragraph 11 of the application are perused, what is contended by the Applicants is that their Advocate did not explain to them the errors committed by the District Court while passing the impugned decree. If there is no positive averment about absence of knowledge of passing of the decree, the averment about Advocate not explaining merits of the appeal or errors in the decree of the First Appellate Court cannot be a ground for condoning inordinate delay of 2 years and 207 days. It appears that the Applicants have mainly discussed merits of the dispute in the application for condonation of delay. What was required to be pleaded is the reason what prevented them from filing the appeal within the period of limitation. The application is bereft of such justification. In absence of pleading of a justifiable cause for condonation of delay, the inordinate delay of 2 years and 207 days cannot be condoned.

5) In that view of the matter, I am not inclined to condone the delay in filing the Second Appeal. Interim Application is accordingly **rejected**. In view of the rejection of the Interim Application, nothing would survive in the Second Appeal and same is also **dismissed**.

[SANDEEP V. MARNE, J.]