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

**SECOND APPEAL NO.291 OF 2016**

Prayagbai w/o Nagnath Palankar  
Age - 55 years, Occ - Household  
R/o Rural Hospital, Shirur-Anantpal,  
Taluka - Shirur-Anantpal,  
District - Latur

APPELLANT

VERSUS

1. Parwati Baburao Suwarnakar  
Age - 37 yeras, Occ - Household  
R/o Ahemadpur, Taluka - Ahemadpur  
District - Latur

RESPONDENTS

2. Vinod Baburao Suwarnakar  
Age - 16 years, Occ - Education

3. Ravi Baburao Suwarnakar  
Age - 14 years Occ - Education

No.2 and 3 minors, under guardianship of  
respondent No.1 Mother

4. Kum. Warsha d/o Baburao Suwarnakar  
Age - 11 years, Occ - Education  
minor, under guardianship of  
respondent No.1 Mother

5. Vishal s/o Baburao Suwarnakar  
Age - 22 years, Occ - Education  
R/o Ahemadpur, Taluka - Ahemadpur  
District - Latur

6. Baburao s/o Gopinath Suwarnakar,  
Age - 57 years, Occ - Agriculture  
R/o Ahemadpur, Taluka - Ahemadpur  
District - Latur

7. Prabhakar s/o Gopinath Suwarnakar  
Age - 42 yers, Occ - Agriculture

R/o Saraf Lane (Rohit Prabhakar Suwarnakar)  
Saraf Shop, Latur,  
District - Latur

8. Anant s/o Gopinath Suwarnakar,  
Age - 37 years, Occ - Agriculture  
R/o As above

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Mr. Sachin S. Deshmukh, Advocate for the appellant  
Mr. E. G. Irale, Advocate for respondents No.1 to 6  
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**[CORAM : SUNIL P. DESHMUKH, J.]**

**DATE : 23<sup>rd</sup> NOVEMBER, 2016**

**ORAL JUDGMENT :**

1. Heard learned advocates for the appearing parties finally with consent.
2. The second appeal gives rise to a substantial question of law as to whether the first appellate court, while dealing with an application for condonation of 110 days' delay in preferring regular civil appeal against judgment and decree dated 17<sup>th</sup> October, 2012 had approached the matter, which would be compatible with the position of law in respect of condonation of delay?
3. Mr. Sachin Deshmukh, learned advocate appearing for the appellant earnestly requests this court to allow the second

appeal giving finding in favour of the appellant in respect of aforesaid question so framed contending that not only the delay had been accounted for by giving reasons in the application, but also that the first appellate court has failed to consider the prevailing legal position in respect of condonation of delay. He submits that although the respondents purported to contest the reasons given under the application for condonation of delay, yet veracity of the same has not been seriously disputed by placing on record any credible material. In the circumstances the matter ought to have been approached taking up lenient view and the application ought to have been granted, may be by awarding costs for compensating inconvenience, if any, caused to the respondents.

4. On the other hand, Mr. E. G. Irale, learned advocate appearing for respondents No.1 to 6 contends that the first appellate court has properly considered the matter. He contends that there is no substance in the reasons given under the application for condonation of delay. No cogent material had been placed before the first appellate court lending credence to the pleas taken in the application and the reasons are not sufficient for condonation of delay.

5. Perusal of the impugned order depicts that the first appellate court has considered lack of communication by advocate and the one about ailment of mother-in-law of the appellant do not inspire confidence, for, the appellant was required to be in touch with the advocate and although there is a plea of admission of mother in law in hospital, no material had been placed in respect of the same.

6. While aforesaid is the position, it may have to be considered in the circumstances that it is not the case that no reasons in the application have been given for condonation of delay. It has been the case of the appellant that the advocate had not communicated about further progress in the suit. The learned judge appears to have considered that it was the responsibility of the appellant to be in touch with the advocate of further progress and further that the indisposition of her mother in law has not been supported by any material. Yet, it will be required to be considered that the appellant is from fair gender and further that she would hardly have benefited by causing deliberate delay.

7. In the circumstances, having regard to the position in respect of delay condonation emerging from various decisions of

the Supreme Court and High Courts and particularly the guidelines as are appearing in the decision of the Supreme Court in the case of *“Collector, Land Acquisition Anantnag V/s Katiji”* reported in *1987 AIR (SC) 1353*, which would be required to be looked into in the present matter and that the situation in the present matter can be salvaged by opening an avenue for contest on merits amongst the parties and in the process compensating inconvenience being caused to the respondents by awarding costs and further it will have to be taken into account that the delay cannot be termed to be an extraordinary one. In the circumstances, the situation calls for liberal approach as required in the prevailing position of law instead of being pedantic.

8. Thus, the substantial question of law stands answered accordingly holding that the approach of the first appellate court could have been liberal and lenient and by imposing costs, the delay could have been condoned.

9. In the circumstances, second appeal is allowed. Judgment and order of the first appellate court dated 23<sup>rd</sup> March, 2016 on Miscellaneous Application 16 of 2013 stands set aside. Miscellaneous Application 16 of 2013 stands allowed on the condition that the appellant shall deposit a sum of Rs.7500/- to

be paid to the plaintiffs. The costs are supposed to be deposited in the first appellate court within a period of eight weeks from today. Upon deposit of the amount, the same shall be disbursed among the plaintiffs. In case of failure to deposit the costs within stipulated time, the second appeal shall be deemed to have been dismissed.

10. In view of disposal of second appeal, the civil application does not survive and stands disposed of.

**[SUNIL P. DESHMUKH, J.]**

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