

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

**WRIT PETITION NO. 5444 OF 2016**

1. Yashwant Ananda Patil  
Age 53 yrs, Occ. Agri.  
R/o Nehru nagar, Mohadi Road,  
Jalgaon, Tq. & Dist. Jalgaon.
  
2. Kishor Ramkrishna Mahajan,  
Age 67 yrs, Occ. Agri.  
R/o Sadoba nagar, Near Hira Pipe  
Jalgaon, Tq. & Dist. Jalgaon.
  
3. Girish Ramkrishna Mahajan  
Age 57 yrs, Occ. Agri.  
R/o 30, Ramanand Nagar,  
Jalgaon, Tq. & Dist. Jalgaon. ... Petitioners

**Vs.**

1. Rajanibai Prakash Attarde  
Age 58 yrs, Occ. Agri. & Business  
R/o A/p nanded, Tq. Dharangaon,  
Dist. Jalgaon.
  
  2. Sau. Rajani Baliram Chaudhari  
Age 65yrs, Occ. Agri. & Business  
R/o Vitthal Peth, Jalgaon,  
Tq. & Dist. Jalgaon.
  
  3. Smt. Shashikakala Hiralal Chaudhari  
Age 55 yrs, Occ. Agri. & Business
  
  4. Pushkaraj Hari Chaudhari  
Age 50 yrs, Occ. Agri. & Business
- Both R/o Chaudhari Wada,  
Old Jalgaon, Tq. & Dist. Jalgaon. ... Respondents

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 Mr. Pramod R. Dhorde, Advocate for the petitioners.  
 Mr. Girish Nagori, Advocate for respondents.  
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**CORAM : SUNIL P. DESHMUKH, J.**  
**DATE : 28-06-2016.**

**ORAL JUDGMENT :**

1. Rule. Rule made returnable forthwith and heard finally with consent of the parties.

2. The petitioners, aggrieved by impugned order dated 22-04-2016 of condonation delay of 104 days are before this court.

3. Learned counsel for the petitioners Mr. P.R. Dhorde vehemently urges this court to indulge into his request and interfere with and unsettle the impugned order and to refuse the condonation of delay. He submits that no material worth the name had been placed on record to show that the reasons given for condonation of delay were really subsisting. He submits that neither the name of the advocate concerned nor any correspondence to the respondents has been referred to. He further submits that the property is a valuable property and has been sold at a very low rate to the appellants who are respondents in this petition.

4. He submits that the suit is decreed. The property is valuable and the litigation is getting stretched in the matter where the merits are in favour of the petitioners. He, therefore, requests this court that the reasons which are given being specious and the order depicts that the matter has been cursorily considered and

delay has been condoned.

5. In order to support his submission he cites a judgment of Hon'ble Single Judge in the case of **Victor Albuquerque V/s. Saraswat Co-operative Bank Ltd & others** reported in 1998(2) MLJ 437. It appears that said reported case concerns a delay of 182 in filing appeal on the pretext that settlement talks were going on. From the record it emerged that the settlements talk which had taken place were far beyond the period of limitation and as such the court considered that the reason given for condonation of delay has been bald and not capable of being construed sufficient cause. In the circumstances, thus it appears that it is in the peculiar facts of the case the court declined to condone delay.

6. Learned counsel for the respondents Mr. Girish Nagori, however, submits that while the appellate court had considered the relevant aspect involved in the matter. The facet that the petitioners themselves had in fact filed caveat in the High Court. It has been the case of the respondents that the matter had been placed into the hands of an advocate at Aurangabad for filing appeal in High Court who had returned the same finding that the appeal would lie to the District Court and not the High Court and that was around January, 2016.

7. He further submits that the aforesaid would indicate that there is indeed sufficient cause which has been given for condonation of delay. It is in these circumstances, the delay has been caused and has been explained accordingly. He further contends by causing delay the respondent-appellants were hardly going to gain any benefit. In fact it would put in jeopardy the meritorious rights they possess in respect of suit property. He submits that when the appellate court has in its discretion allowed the application of condonation of delay, the High Courts normally are very slow in interfering with such discretion.

8. Perusal of the impugned order shows, it has been considered that the plaintiff-petitioners themselves in fact lodged a caveat in the High Court along with the one in the District Court. The veracity of the contentions on behalf of the respondent-appellants that the matter was handed over for appeal in High Court gets some credence in the circumstances. Whereas the contentions on behalf of the petitioners, could not be supported by any convincing material. Perusal of order shows relevant considerations have been addressed to and the court has found that reasons given show sufficient cause. Delay caused does not appear to be deliberate or intentional. The appellants-respondent were concerned with the suit property and have, therefore, approached the appellate court giving reasonable explanation for condonation of

delay, the court imposed certain costs on the respondent-appellants. No fault can be found with it.

9. The request on behalf of the petitioners to enhance cost may be given its due as such the costs stand enhanced from Rs.1,000/- to Rs.5,000/-. Learned counsel Mr. Girish Nagori, communicates that Rs.1,000/- awarded as costs by the appellate court have been deposited. As such the respondent-appellants shall deposit a further sum of Rs.4,000/- in the appellate court for its onward disbursement to the petitioners. The cost be deposited preferably within a period of four weeks from the date of receipt of this order.

10. As such writ petition is not being entertained and is being dismissed. Rule made absolute in aforesaid terms. Rule discharged.

**(SUNIL P. DESHMUKH)**  
**JUDGE**