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

**SECOND APPEAL NO.24 OF 2014**

1. Atmaram s/o Gauba Chavan (Deceased) APPELLANTS

2. Rubabi w/o Atmaram Chavan,  
Age – 65 years, Occ – Agriculture

3. Chandrahas s/o Atmaram Chavan,  
Age – 46 years, Occ – Agriculture

Both R/o Dhanegaon, Taluka – Jamkhed  
District – Ahmednagar

VERSUS

Kumarika w/o Murlidhar Dalvi RESPONDENT  
Age – 49 years, Occ – Agriculture  
R/o Shelgaon, Taluka – Paranda,  
District - Osmanabad

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Mr. Amol Jagtap h/f Mr. N. J. Patil, Advocate for the appellants  
Mr. S. A. Wakure, Advocate for the respondent

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

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

**ORAL JUDGMENT :**

1. Heard learned advocates for the parties finally with consent.

2. After hearing learned advocates following question emerges for consideration in the matter-

*"Whether the first appellate court, while dealing with an application for condonation of 399 days' delay in*

*preferring regular civil appeal against judgment and decree dated 8<sup>th</sup> March, 2011 passed in favour of present respondent, had approached the matter, which would be compatible with the position of law in respect of condonation of delay?"*

3. Regular Civil Suit No.85 of 2008 had been instituted by the plaintiff – respondent for claiming partition and separate possession against the defendants – present appellants.

4. Perusal of the Civil Miscellaneous Application No.170 of 2012 shows that the appellant has contended that he had engaged an advocate in the suit, who had in turn told him that the appellant would be kept apprised in respect of further progress in the suit and it was not necessary to make frequent visits to him. However, despite the decree having been passed, the matter going unattended on behalf of the appellant, the information had not come the appellant's way. It further appears to be the case of the appellant that in the meeting scheduled for resolution of dispute at the village level on 22<sup>nd</sup> April, 2012, it transpired that there has already been a decision in the suit and the suit has been decreed. Thereafter, immediately the application had been moved for condonation of delay in filing the appeal.

5. Perusal of the impugned order shows that the appellate court has considered in paragraph No.4 as under:-

*“ 4. While pondering the evidence of the applicant original defendant No.3, it is obvious that he has not explained why there is delay of 399 days caused to challenge the judgment and decree dt.8.3.11 delivered by CJJD Jamkhed in RCS No.85/08. He has given reason in the application to condone the delay that in Tantamukti matter was kept at Dhanegaon. In response to the notice opponent No.1 came. The members of Tantamukti asked her what is about the court matter and she stated that the Court has already decided the matter. The applicant then came to know about the decision of the suit. Further he was suffering by illness. Therefore, the delay to file appeal against impugned judgment and decree. However, the applicant himself in his cross examination gave serious admission that he does not know whether he came to know about the decision of the suit in Tantamukti meeting. He does not know the date of the said meeting. He does not know whether notice was issued to opponent Kumarika Dalvi by the Tantamukti. Therefore, it is crystal clear that the opponent himself failed to exercise his right to resist the suit on merit in the Court of CJJD Jamkhed. ”*

6. The appellate court further appears to have considered that witnesses on behalf of the applicant did not inspire confidence.

7. Although Mr. Wakure, learned advocate for the respondent submits that no material which can be said to be credible has been placed on record in respect of the contentions taken in the application, yet it appears that veracity of the contents about engagement of advocate and the advocate in turn not communicating has not been the matter of serious dispute. In the circumstances, it further will be required to be considered that it would not be said that the appellant has gained any

benefit in the process of causing delay. May be it is case that the respondent has been put to some inconvenience.

8. Looking at the position in respect of delay condonation, emerging from various decisions of the Supreme Court and High Court 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 may suggest that 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 caused to the respondents by awarding costs.

9. It may have to be taken into account that in the circumstances the delay cannot be termed to be an extraordinary one. The situation calls for liberal approach as required in the prevailing position of law instead of being pedantic.

10. 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 would have been condoned.

11. In the circumstances, second appeal is allowed. Judgment and order of the first appellate court dated 25<sup>th</sup> October, 2013 on Civil Miscellaneous Application 170 of 2012 stands set aside. Civil Miscellaneous Application 170 of 2012 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.

12. It is expected that the first appellate court would go on with the appeal as expeditiously as possible, and dispose of the same, preferably within a period of six months. Interim relief as had been operating to continue to operate till orders on interim relief application by the first appellate court.

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

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