

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

**CIVIL APPLICATION NO. 1480 OF 2016
IN
FIRST APPEAL (STM) NO. 9966 OF 2016
WITH
CIVIL APPLICATION NO. 1481 OF 2016**

Mr. Aniruddha Yashwant Vaidya (Deceased)
Through LRs. Mrs. Usha Aniruddha Vaidya ...Applicants

vs.

Arun yashwant Vaidya and ors. ... Respondents

Mr. Harish P. Pawar, Advocate for applicants.
Ms. Archana Pati i/by M/s. Jurists UNO, Advocate for respondents
no.1 to 4.

Coram : Smt. R. P. SondurBaldota, J.

Date : 6th May, 2016

P.C. :

1. This civil application is taken out for condonation of delay of 1 year 270 days in filing the appeal to challenge the preliminary decree of partition passed by the Bombay City Civil Court. The applicants are the heirs and legal representatives of the original defendant, who had filed his written statement to contest the suit. The order of preliminary decree was passed on 30th April, 2014. The Predecessor of the applicants herein, died on 11th May, 2014. The application states that on the death bed the

father had informed the present applicants about the proceedings initiated by respondents against him. But according to the applicants the father could not divulge any further information because of his old age. This would mean that even before the death of the father on 11th May, 2014 the applicants were well aware of the proceedings filed by the respondents. The applicants further claim in the application that on the death of the father after and mourning period was over the applicants made efforts to find out the status of the proceedings from the erstwhile advocate of their father. It would be noted that today the same advocate appears for the applicants. He is alleged to have informed the applicants that he had taken discharge from the proceedings for want of instructions from the deceased. The applicants then claim that they made enquiries in the Court to find out the status of the case and thereafter on 31st July, 2014 applied for the certified copy of the judgment and decree. The same was ready on 7th August, 2014, but was collected by the applicants only on 18th November, 2014. The applicants do not state any explanation for delay in collecting the certified copy. Even after collecting the copy the applicants have taken about one year four months in filing the appeal along with the present application for which again there is no explanation whatsoever. Thus, it is seen that the applicants

have made out no case, whatsoever, for condoning the delay. In fact, it is apparent from the application itself that they were well aware of the proceedings and also the decree in the proceedings during the lifetime of the father himself. Hence, the application is dismissed.

2. In view of dismissal of the civil application, First Appeal (Stm) No. 9666 of 2016 and Civil Application No. 1481 of 2016 do not survive. The same are accordingly disposed off.

[Smt. R. P. SondurBaldota, J.]