

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

**CIVIL APPLICATION NO.722 OF 2016
in
APPEAL FROM ORDER (ST.) NO.28810 OF 2015
along with
APPEAL FROM ORDER (ST.) NO.28810 OF 2015**

Mrs.Damyani Dnyaneshwar Garud & Ors. .. Applicants/Appellants
Vs.

Popat Haribhau Choudhari & Ors. .. Respondents

Mr.A.B. Tajane for the applicants.

Mr.Ditendra Kumar J. Mishra for the respondent no.1.

Mr.V.S.Tadke for the respondent nos.2 to 12.

CORAM : R.D. DHANUKA, J.
DATE : 23rd September 2016

P.C.

. By this civil application, the applicants seek condonation of delay of 2 years and 4 months in filing the appeal from order. In the said appeal from order, the appellants have impugned the order passed by the learned trial Judge below Exhibit 5 dated 27th November 2013. On 28th November 2013, the appellants applied for certified copy. The certified copy was available on 7th December 2013. On 20th January 2014, the applicants filed a Writ Petition (1480 of 2014) impugning the order below Exhibit 5 and also the separate order below Exhibit 26.

2. By an order and judgment dated 13th August 2015, this Court dismissed the writ petition in so far as the challenge to the order below Exhibit 26 was concerned and granted liberty to file appeal from order for challenging the order below Exhibit 5. Pursuant to the said

liberty granted by this Court on 13th August 2015, on 19th October 2015, the applicants filed Appeal from Order (St.) No.28810 of 2015.

3. Learned counsel appearing for the applicants submits that the applicants were prosecuting the writ petition bonafidely and in good faith and thus the time taken in prosecuting the writ petition against the order below Exhibit 5 shall be excluded under Section 14 of the Limitation Act, 1963. He submits that considering this fact, this Court while dismissing the writ petition vide order dated 13th August 2015 has granted liberty to the applicants to file appeal from order against the said order below Exhibit 5.

4. Learned counsel appearing for the respondents, on the other hand, opposes this civil application on the ground that the delay is not properly explained. It is submitted that this Court has already granted the order of status-quo in Writ Petition No.3845 of 2014 in respect of the same suit property and thus no purpose would be served by condoning the delay.

5. There is no dispute that the applicants had challenged the order below Exhibit 26 and below Exhibit 5 by filing a composite writ petition on 20th January 2014 which came to be disposed of on 13th August 2015 by granting liberty to the applicants to file appeal from order against the order below Exhibit 5. If the time taken in filing the writ petition and in filing the appeal from order after disposal of the writ petition is considered, appeal from order is filed within 82 days. I am of the view that the applicants had been prosecuting the writ petition by filing a common writ petition impugning the order below Exhibit 26

and below Exhibit 5 which was pending till 19th August 2015 in good faith and with due diligence. This Court after considering these facts has granted liberty to the applicants to file appeal from order. Time taken in prosecuting the writ petition is thus excluded under Section 14 of the Limitation Act, 1963.

5. Be that as it may, I have perused the averments made in the civil application and I am of the view that the delay is sufficiently explained. For the reasons recorded in the civil application, delay caused due to prosecuting the writ petition is condoned. Civil application is made absolute in terms of prayer clause (a). No order as to costs.

6. Place the appeal from order on board for 'Admission' on 5th October 2016.

R.D. DHANUKA, J.