

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

Amk

**CIVIL APPLICATION NO. 3445 OF 2016
IN
FIRST APPEAL NO. 1519 OF 2006**

Mr. Krishna Annappa Choudhari
since deceased through LRs .. Applicants

In the matter between

Krishna Annappa Choudhari (deceased) .. Appellants
since deceased through LRs

Vs.

Mr. Narhari Annappa Choudhari
since deceased through LRs. .. Respondents

Mr. Pratap Patil for the Appellant/Applicant.
Mr. Ajay D. Magdum i/b Mr. S. S. Patwardhan & Associates for
Respondent Nos.1A to 1E.
Mr. S. V. Sakhare for Respondent No.1A.

CORAM : DR. SHALINI PHANSALKAR-JOSHI, J.
DATE : 26th AUGUST, 2016.

P. C. :

1. Heard learned counsel for the parties.
2. This is an application seeking condonation of delay of about 9 years in filing the Civil Application for restoration of First Appeal No. 1519 of 2006 which was dismissed for default by this Court on 26.07.2007.
3. It is submitted that though the appeal came to be dismissed for default, the cross-objections, which are filed by the respondents, are

yet pending. Now, in view of the enhancement of the pecuniary jurisdiction of the District Court, the cross-objections and this appeal are also required to be sent to the District Court. Learned counsel for the respondents opposed this application on the count that there is inordinate delay of about 9 years in preferring this application. It is submitted that no sufficient cause is made out for condonation of such a huge delay.

4. It is true that the delay in preferring this application is quite inordinate but at the same time it is required to keep in mind that the cross-objections arising out of the Judgment and Order of the Trial court impugned in this appeal are also pending and yet not decided. The interest of justice always requires that the matter should be decided fully and on merits instead of dismissing the same at threshold. The law also requires that so far as the application for condonation of delay, the Court should adopt a liberal approach. Hence, considering all these facts, it becomes necessary to allow this application for condonation of delay and to restore to its original file. At the same time, in order to compensate the respondents for the loss occasioned to them due to delay caused in preferring this application, the applicants are directed to pay the costs of Rs.10,000/-, to be deposited in this Court and payable to the respondents in proportion.

5. As both the appeal and cross-objection need to be now

transferred to District Court, in view of the enhancement of the pecuniary jurisdiction of the District Court, on applicants depositing costs within two weeks from today, the appeal to be restored to its file and both the appeal and cross-objection be sent to the District Court, Sangli.

6. On failure of the applicant to deposit the costs within the stipulated period, the application stands automatically dismissed without further reference to this Court.

[DR. SHALINI PHANSALKAR-JOSHI, J.]