

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.6996 OF 2016

Dilkhush Ugamraj Bhandari & another

Petitioners

Versus

Nemichand Bhabhutmal Marwadi

Respondent

Mr. Smt. Seema T. Pawar h/f Mr. A.G. Talhar advocate for the petitioners
Mr. R.M. Deshmukh, advocate for Respondent

CORAM : **RAVINDRA V. GHUGE, J**

(Date : 28th July, 2017.)

PER COURT :-

1 The petitioners are aggrieved by the order dated 25.1.2016 passed by the learned appeal Court, thereby rejecting the Civil Miscellaneous Application No.17/2012. Consequently, the delay of about 371 days was not condoned and the Regular Civil Appeal was not considered.

2 During the course of hearing, the learned Advocate for the respondent indicated from paragraph Nos.14, 15, 16 and 17 of the impugned order that, the said application was rejected because, it was proved before the Trial Court that the petitioner-applicants had resorted to falsehood. Since false statements were assigned, the Appeal Court had rejected the application.

3 The learned Advocate submits, on instructions that the petitioners are willing to deposit Rs.1,00,000/- before the appeal Court to show their bonafides and the respondent can withdraw Rs.20,000/- towards the costs for the delay and the remaining amount of Rs.80,000/- can be kept in fixed deposit in a nationalized bank, during the pendency of the Appeal, keeping in view that the claim of the petitioners – plaintiffs is for recovery of an amount of Rs.3,78,500/-.

4 It is noticed at this stage that, as the Miscellaneous Civil application, seeking condonation of delay in filing a Regular Civil appeal was rejected, it would amount to rejection of the main appeal itself and the petitioners would have to file a Second Appeal for challenging the impugned order.

5 Considering the above, this petition is disposed of with liberty to the petitioners to prefer a Second Appeal. If the same is filed within a period of four weeks from today, the time spent by the petitioners from 16.4.2016 till the date of this order, in this petition, shall be a ground for seeking condonation of delay.

(RAVINDRA V. GHUGE , J)