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IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.7529 OF 2017

1. Mohammed Subhan s/o Mohammed Osman PETITIONERS
Age – 72 years, Occupation – Agriculture
R/o Jamal Shah Colony,
Sillode, Taluka – Sillode,
District – Aurangabad
2. Mohammed Mukhtar s/o Mohammed Subhan,
Age – 47 years, Occupation – Agriculture
R/o As above
3. Abdul Razzak s/o Mohammed Subhan,
Age – 35 years, Occupation – Agriculture
R/o As above

VERSUS

1. Raziyabee w/o Abdul Aziz RESPONDENTS
Age – 68 years, Occupation – Household
R/o Abdalshah Nagar, Sillode,
Taluka – Sillode, District – Aurangabad
2. Bismillabi w/o Saleem Khan,
Age – 72 years, Occupation – Household
R/o Masoba Galli, Sillode,
Taluka – Sillode
District – Aurangabad

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Mr. M. B. W. Khan, Advocate for the petitioners
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[CORAM : SUNIL P. DESHMUKH, J.]

DATE : 12th JUNE, 2017

ORAL JUDGMENT :

1. Heard learned advocate for the petitioners.

2. Writ petition has been moved against order dated 8th March, 2017 allowing MARJI No.341 of 2013 condoning delay in filing regular civil appeal against dismissal of suit by respondents by awarding costs of Rs.800/- to be paid to defendants @ Rs.200/- each.

3. Learned advocate Mr. M. B. W. Khan, vehemently contends that there is disparity in reasons for condonation of delay. Firstly, while the delay has been computed is about sixty five days whereas reference in the application is only to forty six days of delay. Further that while application refers to a reason that there was shortage of fund whereas in evidence it has come on record that it is illness of the plaintiff which caused delay. In the circumstances, he contends that it cannot be said that requirement under section 5 of the Limitation Act of there being sufficient cause for condonation of delay can be said to have been satisfied. He, therefore urges to intervene in the matter and set aside the order impugned in present writ petition.

4. Learned appellate judge has considered in the impugned order the contentions on either side and has referred to decisions of courts and in his discretion has condoned the delay. Learned judge has considered that the reasons given by the

applicants for condonation of delay cannot be considered as improbable. With reference to certain material it has been observed that it cannot be presumed that merely having agricultural land in the name is sufficient to prove that the applicants are in sound financial position. It has been further observed that for failure to examine doctor for the period of sufferance does not affect the case that delay has been also on account of illness.

5. In view of that discretion has been exercised judiciously and for the reasons which cannot be said to be not probable and not sound, I do not deem it expedient to meddle with the order impugned.

6. Writ petition, as such, stands dismissed.

[SUNIL P. DESHMUKH, J.]