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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO. 10690 OF 2016

1. Rajnikant s/o Madhav Khandagale,
Age: 75 years, Occ: Retired,
R/o. In front of Tahsil office,
Bus Stand Road, Vaijapur,
Tq. Vaijapur, Dist. Aurangabad.
2. Chandrakaur w/o Atmaram Chandrashekar,
Age: 70 years, Occ: Household,
R/o. Ward No.6, Telingpura,
Tq. Dist. Buldhana.
3. Vasant s/o Madhav Khandagle,
Age: 50 years, Occ: Service,
R/o. Civil Hospital, Pachod,
Tq. Dist. Aurangabad.
4. Sharda w/o Silvaraj Swami,
Age: 48 years, Occ: Household,
R/o. In front of Mahila Sudhar
Gruh, Tq. Dist. Jalna.
5. Santosh s/o Madhav Khandagle,
Age: 60 years, Occ: Retired,
R/o. h. No. 4/20/36, New Laxmi
Colony, near Pradnya Nagar,
Chhawani, Aurangabad.
General Power of Attorney Holder
for petitioner Nos. 1 to 4. ..PETITIONERS

VERSUS

1. Latabai w/o Shyamrao Salve,
Age: Major, Occ: Household,
R/o. Gundegaon, Tq. Ahmednagar,
Dist. Ahmednagar.
2. Gayabai w/o Rambhau Salve,
Age: Major, Occ: Household,

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R/o. Avhane Khurd, Tq. Shevgaon,
Dist. Ahmednagar.

3. Premchand s/o Dagdu Khandagle,
Deceased through L.Rs.

3A. Rohini D. Gaikwad,
Age: Major, Occ: Household,
R/o. Anand Row Housing Society,
MALHAR Chowk, Ahmednagar.

3B. Bhagchand Premchand Khandagle,
Age: Major, Occ: Service,
R/o. Medical Quarters, B-2,
Aurangabad.

(Respondent Nos.3A & 3B dismissed
as per Court's order dtd.19/06/2017)

3C. Dipchand Premchand Khandagle,
Age: Major, Occ: Service,
R/o. Sai Niketan Colony,
Sr. No.125, Vishramwadi, House
No.15, Pune.

3D. Tarachand Premchand Khandagle,
Age: Major, Occ: Service,
R/o. Shivaji Shikshan Prasarak
Mandal, Rahuri Sahakari Sakhar
Karkhana Rajuri, Tq. Rahuri,
Dist. Ahmednagar.

3E. Satyadan Premchand Khandagle,
Age: Major, Occ: Agri.,
R/o. Avhane, Tq. Shevgaon,
Dist. Ahmednagar.

4. Sau. Nalini Shantilal Bora,
Age: 52 years, Occ: Household,
R/o. Dipak Nayadu Ranjit Apartment,
Rambag Colony, Plot No.57,
House No.4, Poud Rd., Kothrud,
Pune 29.

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(As per Court's order dated
21/07.2017 dismissed against
respondent Nos.3C, 3D,3E, & 4)

5. Kamalbai Kamlakar Salve,
Age: 48 years, Occ: Household
& Agri., R/o. Avhane Khurd,
Tq. Ahmednagar, Dist. Aurangabad.
6. Mohan Kacharu Salve,
Age: 48 years, Occ: Agri.,
R/o. Avhane Khurd, Tq. Ahmednagar,
Dist. Aurangabad.
7. Suman Anandrao Salve,
Age: 43 years, Occ: Agri.,
R/o. Avhane Khurd, Tq. Ahmednagar,
Dist. Aurangabad.
(Dismissed as per Court's order
dated 19/06/2017 against
respondent Nos.5,6 and 7) ..RESPONDENTS

Mr R.G. Joshi, Advocate for petitioners;

CORAM : NITIN W. SAMBRE, J.

DATE : 1st NOVEMBER, 2017

ORAL ORDER :

The original plaintiffs are questioning the order dated 31st August, 2013, whereby the lower appellate Court, while entertaining the appeal of the defendants, condoned the delay of 241 days.

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2. Learned Counsel for the petitioners – original plaintiffs submits that before ordering condonation of delay, no notice was served on the petitioners and as such, there is denial of hearing. He would then urge that while passing the order of stay to the execution of the decree, least that was expected of the Court was, to hear in detail the petitioners and record reasons in support of the order of grant of stay. According to him, learned lower appellate Court, in mechanical manner, has proceeded to order condonation of delay and has stayed the execution of the decree in question, wherein the sale deed in favour of the defendants-respondents was set aside.

3. Considered submissions. The petitioners are also heard on the issue of cause considered by the lower appellate Court for condonation of delay by assuming that they were served before the order of condonation of delay came to be passed.

4. Learned Counsel for the petitioners

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submits that though he has tried to emphasis that the medical certificate produced does not speak of any period for which the medical ailment was certified. However, it is required to be noted that the power to condone delay is a discretionary relief. The lower appellate Court considered the factual matrix as was brought before it and proceeded to condone the delay in the matter. The delay though is ordered to be condoned, based on the grounds as were canvassed before it, however, in my opinion, learned lower appellate Court should have put the respondents-appellants to condition of cost.

5. As such, without causing any interference in the impugned order dated 31st August, 2013 ordering condonation of delay in favour of respondent Nos. 1 and 2, in my opinion, additional condition needs to incorporate is, the original appellants to pay costs of Rs.3000/-to the present petitioners, to be deposited in the appellate Court within a period of six weeks from the date of

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production of copy of this order by the present petitioners before the lower appellate Court.

6. So far as second submission of the petitioners qua objecting the order of granting stay to the execution of the decree in trial Court is concerned, it is not in dispute that such order is passed below Exhibit-7 on 5th April, 2016, wherein the appellate Court considered irreparable loss likely to be caused to the present respondents and proceeded to stay the judgment and decree.

7. Since the said order is in existence for more than 15 months, it will be appropriate, in my opinion, to continue the order of stay passed by the learned lower appellate Court on 5th April, 2016 till final disposal of Regular Civil Appeal No. 270 of 2013 pending on the file of District Judge, 5 Ahmednagar.

8. However, learned District Judge is directed to decide the said appeal being Regular

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Civil Appeal No. 270 of 2013, as expeditiously as possible, in any case, within a period of six months from the date of production of this order by the petitioners before the said Court.

9. With above observations, the petition stands disposed of.

(NITIN W. SAMBRE, J.)

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