

(1)

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

SECOND APPEAL (ST.) NO.28716 OF 2009

1. Tayyab Patel Sayyad Patel,
Age: 48 years, Occu: Agri.,
R/o Atola, Tal. Chakur,
Dist. Latur
2. Khairunabi Tayyab Patel,
Age: 38 years, Occu: Agri.,
R/o Atola, Tal. Chakur,
Dist. Latur
3. Taherbi Abdul Mannan Patel,
Age: 48 years, Occu: Agri.,
R/o Atola, Tal. Chakur,
Dist. Latur

..APPELLANTS
(Orig.Def.No.1,4,5)

VERSUS

1. Shaikh Inayat Sayyad Patel,
Deceased, through L.Rs. :
 - a) Gaushabi Inayat Shaikh,
Age: 60 years, Occu:
R/o Atola, Tal. Chakur,
Dist. Latur
 - b) Sajidabi Rafiq Shaikh,
Age: 30 years, Occu:
R/o Near Government Hospital,
Wadhwana, Tq. Udgir,
Dist. Latur
 - c) Ahmed Inayat Patel,
Age: 35 years, Occu:
R/o Atola, Tal. Chakur,
Dist. Latur
 - d) Faridabee Mehtab Shaikh,
Age: 32 years, Occu:
R/o Gharni, Tq. Chakur,
Dist. Latur

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- e) Amjad Inayat Shaikh,
Age: 30 years, Occu:
R/o Atola, Tal. Chakur,
Dist. Latur
- 2. Gausabi Inayat Patel,
Age: 55 years, Occu: Agri.,
R/o Atola, Tal. Chakur,
Dist. Latur
- 3. Shaikh Maula Majidkhan,
Age: 32 years, Occu: Agri.,
R/o Atola, Tal. Chakur,
Dist. Latur
- 4. Abdul Mannan Patel,
Died, thr. L.Rs.
- a) Asar Mannan Patel,
Age: 25 years, Occu: Agri.,
R/o Atola, Tal. Chakur,
Dist. Latur
- b) Faimda Vajeer Patel,
Age: 21 years, Occu: Agri.,
R/o Atola, Tal. Chakur,
Dist. Latur
- c) Mujayat Mannan Patel,
Age: 19 years, Occu: Agri.,
R/o Atola, Tal. Chakur,
Dist. Latur

..RESPONDENTS

Mr A.N. Sabnis, Advocate holding for Mr V.D. Gunale, Advocate for appellants;
Mr Vivek Bhavthankar, Advocate for respondent no.2

CORAM : N.W. SAMBRE, J.

DATE : 2nd August, 2017

ORAL ORDER

Heard.

(3)

2. The Principal District Judge, Latur, vide order dated 21st June, 2008, passed in Misc. Application No.32 of 2007, refused to condone delay of 7 months and 14 days caused in preferring an appeal against judgment and decree dated 14th March, 2006, passed in Regular Civil Suit No.277 of 2002.

3. While dealing with the claim for condonation of delay, considering the conduct of the present appellants, the lower appellate court observed that the discretionary relief of condonation of delay cannot be granted as the appellants have not approached the said Court with clean hands.

4. Considered the reasons cited for rejection of application for condonation of delay and the nature of litigation pending between the parties.

5. Though the learned Principal District Judge has observed that the appellants were not diligent in pursuing their right of preferring an appeal, still it is required to be noted that there appears to be certain compromise talks for which the matter was placed before Lok Nyayalaya. It is claimed that the present appellants are illiterate persons and as such were not in a position to understand and contact the lawyer for the said purpose.

6. The reasons for condonation of delay caused in preferring an appeal appear to be appealing. In view thereof, in my opinion, in the interest of justice, the present appeal needs to be allowed. Thus, following order :-

(4)

The order dated 21st June, 2008, passed by the Principal District Judge, Latur, in Misc. Application No.32 of 2007, is quashed and set aside. The delay of 7 months and 14 days caused in preferring an appeal against judgment and decree dated 14th March, 2006, passed in Regular Civil Suit No.277 of 2002 stands condoned subject to payment of costs of Rs.3,500/- by the appellants to the respondents, which amount be deposited in the lower appellate court within four weeks from today. The respondents herein shall be entitled to withdraw the same.

Parties to the appeal shall appear before the lower appellate court on 1st September, 2017.

The lower appellate court shall decide the appeal on merits expeditiously.

Second Appeal stands disposed of in above terms.

In view of disposal of Second Appeal, Civil Application No.5173 of 2010 does not survive and stands disposed of.

(N.W. SAMBRE, J.)

amj