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

**SECOND APPEAL NO. 315 OF 2017
WITH
CIVIL APPLICATION NO. 14231 OF 2015
IN
SECOND APPEAL NO.315 OF 2017**

1. Ganpati Dipaji Mane,
Age: years, Occ: Agri.,
R/o. Karagavan, Tq. Beed,
Dist. Beed.
 2. Hari Ganpati Mane,
Age: years, Occ: Agri.,
R/o. Karagavan, Tq. Beed,
Dist. Beed.
 3. Bhalchandra Ganpati Mane,
Age: years, Occ: Agri.,
R/o. Karagavan, Tq. Beed,
Dist. Beed.
 4. Balasaheb Ganpati Mane,
Age: years, Occ: Agri.,
R/o. Karagavan, Tq. Beed,
Dist. Beed.
 5. Kashibai Machindra Ugale,
Age: years, Occ: Household,
R/o. Sasura, Taluka Kaij,
Dist. Beed.
 6. Moharbai Baliram Nande,
Age: years, Occ: Household,
R/o. Sasura, Taluka Kaij,
Dist. Beed.
- ..APPELLANTS

VERSUS

1. Kailas Dinkar Mane,
Age: years, Occ: Agri.,

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R/o. Karagavan, Tq. Beed,
Dist. Beed.

2. Tulsabai Dinkar Mane,
Age: years, Occ: Agri.,
R/o. Karagavan, Tq. Beed,
Dist. Beed.

3. Ashabai w/o Bapurao Mane,
Age: 69 years, Occ: Household,
R/o. As above. ..RESPONDENTS

Mr A.G. Choudhari, Advocate for appellants;
Mr Yogesh Bobde, Advocate h/f Mr Atul B. Hawale,
Advocate for respondent Nos.1 to 3

CORAM : N.W. SAMBRE, J.

DATE : 27th JUNE, 2017

ORAL ORDER :

Present appellants are the original defendants to Regular Civil Suit No. 320 of 2008, which was for partition and separate possession of land Gat Nos.246 and 249 situated at village Wangi, Taluka and District Beed.

2. The trial Court decreed the suit and ordered that original plaintiffs i.e. respondent Nos. 1 and 2 are entitled for 1/8th share, original plaintiff No. 3 i.e. respondent No. 3 will be

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entitled for 1/8th share and each defendants will be entitled for 1/8th share in the suit property.

3. Against the said judgment, an appeal was preferred before the District Judge, Beed which was accompanied by Misc. Civil Application No. 569 of 2013. The said application came to be rejected by learned District Judge, Beed on 17th June, 2015 refusing to condone delay. As such, this second appeal.

4. Amongst other grounds raised are, delay of 17 and 1/2 months was properly explained by the appellants and in the light of law laid down by this Court in the judgment of ***Shewantabai wd/o Kashinath Kumbhare (since deceased) Suresh Kashinath Kumbhare and others vs Purushottam s/o Mahadeorao Ambatkar*** reported in ***2014(2) Mh.L.J. 848***, this Court is required to take lenient view on the issue of condonation of delay. Another issue sought to be invited to this Court is that subject matter of the suit was already subjected to

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partition in Regular Civil Suit No. 71 of 1981 which was decreed on 24th April, 1995 by Joint Civil Judge, Junior Division, Beed. According to learned counsel for the appellants, as such, this Court should condone delay and direct lower appellate Court to decide the appeal on merits.

5. Per contra, learned Counsel for the respondents submits that learned trial Court has already considered the judgment delivered in earlier Regular Civil Suit No. 71 of 1981 passed by Joint Civil Judge, Junior Division, Beed thereby property in question was already subjected to partition. According to him, what is sought is further partition of the suit property and consequences of earlier proceedings i.e. judgment in Regular Civil Suit No. 71 of 1981 will follow.

6. Having considered rival submissions, at the outset, it is required to be noted that this Court is in agreement with the findings recorded by the lower appellate Court i.e. District Judge, Beed

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refusing prayer of present appellants-original defendants for condonation of delay, as application lacks any bonafides or reasons are noticed for granting prayer for condonation of delay.

7. Apart from above, it is to be noted that earlier judgment in Regular Civil Suit No. 71 of 1981 was dealt with by the trial Court.

8. No case for interference in this appeal is made out. As such, second appeal stands dismissed. Consequently, civil application stands dismissed.

(N.W. SAMBRE, J.)

Tupe