

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.11905 OF 2016

Dr.Pyarelal L. Tiwari
Since deceased, through
Smt. Rama Pyarelal Tiwari & Ors. ...Petitioners

Versus

Chhaya Sarjerao Andre & Ors. ...Respondents

.....
Mr. Drupad Patil for the Petitioners.
Ms.Gite Jayashree i/b. Mr.Ashok B.Tajane for the Respondents.

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CORAM: Mrs.MRIDULA BHATKAR, J.
DATED: JULY 17, 2017

P.C. :

1. Rule. Rule made returnable forthwith. By consent, petition is heard finally and disposed of the stage of admission.
2. This petition is directed against the order dated 26.04.2016 passed by the learned District Judge-19, Pune below Exhibit 1 in Civil Misc. Application No. 341 of 2016.
3. The petitioners/original plaintiffs filed a (Special Civil Suit No. 88 of 2009 old) Regular Civil Suit No. 296 of 2012 for specific performance of the sale deed, declaration and perpetual injunction against the respondents/defendants. In the present petition, respondent

no.1/original defendant no.4 is a contesting party. The Suit was decreed on 28.09.2015. Thereafter, no appeal was filed challenging the said decree within a stipulated period of 30 days by the respondents/defendants. Thereafter, on 30.03.2016, the first appeal was filed alongwith the application for condonation of delay. The said application was allowed and hence this Writ Petition.

4. The learned counsel for the petitioners has submitted that no reasons are given in the application for condonation of delay of nearly five months i.e. after the appeal period was over. The decree holder has got the sale deed executed in his favour. He has further submitted that other defendants are brothers and also they are contesting defendants. He has further submitted that there is no sufficient cause shown by respondent no.1/defendant no.4 and therefore, the order dated 26.04.2016 passed by the learned District Judge-19, Pune is to be set aside.

5. The learned counsel for the respondents supported the order passed by the learned District Judge.

6. Perused the application for condonation of delay and the impugned order. It appears that present respondent no.1/original defendant no.4 was a passive contestant in the main Suit. The said

Suit was decreed on 28.09.2015 and thereafter no appeal was filed within a period of 30 days. However, there is a delay of five months. It appears that she is being a passive contestant, she did not take immediate steps in filing the appeal. Her right to sue the matter in appeal is not to be taken away. Thus the reasons given by the learned District Judge cannot be faulted with. No interference is required in the order, only the amount of the cost is to be increased. The delay is condoned, subject to payment of cost of Rs. 15,000/- to the petitioners. The said costs is to be paid within a period of two weeks in the Appellate Court.

7. In view of the above, Writ Petition is dismissed.

(MRIDULA BHATKAR, J.)