

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

CIVIL APPLICATION NO. 14166 OF 2016 IN
SAST/32648/2016

MADHUKAR RAOSAHEB GONDKAR AND ANOTHER
VERSUS
ALAKNANDA SAMPATRAO THABDE

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Advocate for Applicants : Mr Veer Shrikant T.
Advocate for Respondents : Mr Krishna Salunke h/f Salunke
Sudarshan J

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CORAM : V.K. JADHAV, J.
Dated: February 09, 2018

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PER COURT :-

1. Learned counsel for the applicant submits that the applicants are the original defendant nos. 1 and 2. The trial court has dismissed the suit, however, in appeal first appellate court has allowed the appeal and partly decreed the suit filed by the respondents. Being aggrieved by the same, applicants have preferred appeal which has been delayed by 557 days. Learned counsel submits that the applicant is residing at Mumbai whereas applicant no. 2 is residing at Thane and their suit property is located at Babultara which is near about 500 kms from their residence. Said first appeal was pending before District Court, Jalna for near about 8 years. Learned counsel submits that, though their Advocate has issued a letter to them, however, the

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applicants have not received said letter and accordingly they came to know about judgment passed in their appeal belatedly. Learned counsel submits that, the applicants are the old aged persons working in the private companies in Mumbai and Thane and are also suffering from age old ailments. Learned counsel submits that, thus delay has been occurred. Delay is not intentional one and both the applicants are prevented from sufficient cause to prefer an appeal within limitation. Learned counsel submits that, dispute pertains to the immovable property and same is required to be decided on merits.

2. Learned counsel for respondents has strongly resisted the application on the ground that delay has not been explained satisfactorily.

3. In view of the above submissions and for the reasons stated in the application, I am inclined to condone the delay, however, both the applicants are required to be saddled with some costs. Civil application is allowed in terms of prayer clause 'B' subject to costs of Rs.2,000/- to be paid to the Advocates Association, Bar Library at Aurangabad, within two weeks from the date of this order. CA accordingly

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disposed of.

4. In appeal, issue notice to the respondents. Learned counsel waives notice for respondent.

(V.K. JADHAV, J.)

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