

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

**CIVIL APPLICATION NO.550 OF 2016
IN
SECOND APPEAL (ST) NO.1818 OF 2016**

**WITH
CIVIL APPLICATION NO.551 OF 2016
IN
SECOND APPEAL (ST) NO.1818 OF 2016**

Shri. Balekhan Mohamad Tamboli
(Since deceased Through his Legal heirs
and Representatives) & Ors.

....Applicants

V/s.

Shri. Eknath Gopal Rahirkar & Ors.

....Respondents

Mr. S.S. Kanetkar for the Applicants.

CORAM : M.S. SONAK, J.

DATE : 22nd FEBRUARY, 2018

P.C.

1. Heard Mr. Kanetkar, learned counsel for the Applicants.
2. This civil application seeks condonation of delay of about 6 years and 53 days in institution of the Second Appeal.
3. Mr. Kanetkar submits that the original appellant before the First Appellate Court Mr. Balekhan Mohamad Tamboli was prosecuting the appeal and applicants were really unaware of the Court proceedings. He submits that the applicants came to know about the impugned judgment and decree only when they were served with a notice in the

execution proceeding. He submits that then original applicant died. He submits that the applicants are poor persons and were not aware of legal formalities as regards challenging the impugned judgment and decree. He submits that the delay has taken place for reasons beyond the control of the applicants and such delay is neither intentional nor deliberate. He, therefore, submits that the delay may be condoned.

4. In the civil application, there is an averment that it is only in the year 2011 the notice of execution was received, the applicants came to know that judgment and decree dated 27.08.2009 has been passed against them. Therefore, the civil application seeking condonation of delay and the second appeal came to be filed only on 30.09.2015. There is no explanation for the delay between 2011 and 2015. It has statement that the applicants are poor persons and were not aware of legal formalities, this is not sufficient cause to explain such inordinate delay. In the absence of any proper explanation to explain inordinate delay of over 6 years, it is not possible to exercise the discretion in favour of the applicants and to condone the delay.

5. Accordingly, the civil application for condonation of delay is dismissed, as a consequence the second appeal does not survive and the same is disposed of.

(M.S. SONAK, J.)