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

**WRIT PETITION NO. 80 OF 2016**

Narayan Nathu Patil (Deceased) through .....Petitioners  
his legal heirs Sachin Narayan Patil  
and others

V/s.

Vaishali Krishna Gaikwad and another ....Respondents

Mr. Mahadev D. Pokale for the petitioner.  
Mr. H. J. Dedhiya APP for the State.

**CORAM : NITIN W. SAMBRE, J.**

**DATE : MARCH 16, 2018.**

**P.C.**

One Shantabai claimed to be owner of the property which is the subject matter of the proceedings in question, who was blessed with son and daughter namely Krishna and Lata. Krishna was married to Vaishali. Present petitioners are the sons of Lata who have questioned the order passed under section 12 of the Domestic Violence Act, 2005 (Hereinafter referred to as 'the said Act' for the

sake of brevity) claiming that the property is inherited by the applicant which was also owned by Shantabai through their mother Lata by virtue of a Will.

2 After death of Krishna, Vaishali filed proceedings under the provisions of the said Act in which on 04/05/2012 an order came to be passed by the Metropolitan Magistrate directing present petitioners to pay amount of Rs. 1500/- per month towards accommodation charges to Vaishali. Feeling aggrieved, an appeal was preferred before the learned District Judge which was accompanied with an application for condonation of delay. The said application came to be rejected by the learned District Judge on 30/10/2015 as delay of 20 months was not properly explained. As such, this writ petition.

3 The learned counsel for the petitioner would urge that the delay of 20 months was properly explained. It is further claimed that provisions of section 12 of the said Act cannot be invoked against the applicant, as they have inherited property in question and succeeded

to the title of the same by virtue of a will in their favour by Shantabai. The attention of this Court is invited to the Judgment of the Apex Court in the matter of **Esha Bhattacharjee V/s. Managing Committee of Raghunathpur Nafar Academy and others [(2013) 12 Supreme Court Cases 649]** so as to claim that the Court must appreciate the sufficient cause disclosed in the present petition which justifies the prayer for condonation of delay of 20 months in preferring revision. As such, it is prayed that petition needs to be allowed.

4 This Court heard the present matter on 13/03/2018, when one of the applicant was present before this Court, at whose behest an option was given whether the applicants are ready and willing to deposit arrears. Respondent took time so as to make a statement as to quantum of the amount and period within which said amount can be deposited.

5 The learned counsel for the petitioner, upon instructions, informs this Court that the petitioner cannot deposit the said

amount as they are poor.

6 If the conduct of the petitioners in the present matter, if appreciated, it is worth to note that the appeal preferred against the order of Magistrate passed under section 12 of the said Act was delayed by 20 months, for which no convincing or bonafide reason is coming forward. The petitioners are claiming that the order of the Magistrate was not within their knowledge and it is only after the execution was filed against them, they have chosen to prefer the present writ petition, though petitioners served with the notice of the proceedings.

7 There is hardly any material to infer that the order of the Magistrate was not within the knowledge of the petitioners. Petitioners have even not complied with the order of the Magistrate for last about 6 years and time sought from this Court for deposit of arrears is also not taken to its logical end.

8 Apart from above, on merit, having knowledge that Shantabai,

mother-in-law of the applicant, being owner of the house which before filing of present application was shared by the respondent; non-applicant Vaishali, wife of Krishna, have every right to invoke provisions of Domestic Violence Act, 2005.

9 For the aforesaid reasons, in my opinion, no case is made out. Petition fails, dismissed.

**[NITIN W. SAMBRE, J.]**