

IN THE HIGH COURT OF JUDICATURE AT BOMBAY***CIVIL APPELLATE JURISDICTION*****WRIT PETITION NO. 12462 OF 2017****Dharma Nago Mengal (Nirguda) & Anr. Petitioners****VERSUS****Ragho Janu Nirguda & Ors. Respondents**

Mr.Rajesh Datar for the Petitioners.

Mr.Jyotiram Yadav for the Respondent nos.1 to 8.

CORAM : R.D. DHANUKA, J.**DATE : 17th SEPTEMBER, 2018****P.C.**

By this petition filed under Article 227 of the Constitution of India, the petitioner has impugned the order dated 4th August,2017 passed by the learned District Judge – 3, Kalyan allowing the application for condonation of delay filed by the respondents for condonation of delay of 25 months in preferring the appeal against the judgment and decree dated 25th November,2013.

2. It was the case of the original plaintiff that they had given power of attorney in favour of a party who did not inform the respondents about the decree passed by the learned trial judge dismissing the dispute filed by them. It is the case of the plaintiff that the said constituted attorney also misguided the original plaintiff that he was attending the proceedings regularly and the matter was subjudice before the trial court. It was the case of the respondents that they came to know about the dismissal of the suit only when the notice of the

execution proceedings was received by them.

3. Mr.Datar, learned counsel appearing for the petitioners (original defendants) states that delay of 25 months in filing the appeal was not sufficiently explained. The learned District Judge has taken a casual approach in the matter while allowing the application for condonation of delay of 25 months.

4. Learned counsel for the respondents on the other hand submits that the respondents being villagers and uneducated, had given power of attorney to a third party who was representing them before the learned trial court. The said constituted attorney did not inform about the progress of the suit or about the dismissal of the suit to the respondents and thus the learned District Judge was justified in condoning the delay of 25 months in filing the appeal.

5. The impugned order dated 4th August,2017 indicates that the respondents had pleaded before the learned District Judge that they were depending upon the constituted attorney who was representing them before the learned trial judge and had not informed about the progress of the suit as well as about the dismissal of the suit filed by them.

6. In my view in these circumstances, the learned District Judge ought to have condoned the delay on payment of exemplary cost while condoning the delay. The learned District judge has awarded cost of Rs.5,000/-. I, therefore, pass the following order :-

(a) The impugned order dated 4th August,2017 is modified to the extent that the respondents shall pay cost of Rs.15,000/- to the petitioners within three weeks from today.

(b) It is made clear that if the amount of cost as prescribed in this order is not paid within three weeks, order dated 4th August,2017 to stand set aside and the petition to stand allowed in that event.

(c) No extension of time would be granted for making payment of cost.

7. Writ petition is disposed of in the aforesaid terms.

[R.D. DHANUKA, J.]