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

WRIT PETITION ST. NO. 20677 OF 2018

Sadashiv Genba Jagtap (deceased)
through his legal heirs and others ..Petitioners

vs.

Balku Namdeo Jagtap (deceased)
through his legal heirs and others ..Respondents

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Shri R.P. Hake Patil h/f. Shri Prashant Raul i/b. Shri S.P. Kadam
for petitioners.

Shri Devendra Gaikwad for respondents

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CORAM : M.S.KARNIK, J.

DATE : 1st OCTOBER, 2019

P.C. :

Heard learned counsel for the petitioners.

2. By this Petition the petitioners are challenging the order dated 12th March 2018 passed by the Appellate Court rejecting the application made by the petitioners for condoning the delay in filing the application for restoration of the Regular Civil Appeal No. 214 of 2006.

3. The respondents – original plaintiff Nos. 1 to 3 filed the suit for declaration and possession. The said suit was

decreed as far back on 30th September, 1997. Challenging the said judgment and decree passed by the trial Court, the petitioners filed the Appeal before the Appellate Court. The said Appeal was dismissed for default on 16/8/2012. After the delay of almost 3 years, 2 months and 11 days the Civil Misc. Application No. 224 of 2015 was filed for condonation of delay in filing the application for restoration. The said application came to be rejected by the Appellate Court.

4. In the application for condonation the reason stated by the applicant is that in the year 2015 he was residing at Satara along with one of his son. The applicant – Sadashiv Genba Jagtap (since deceased) was then 86 years of age and therefore was not keeping good health. It is only after he received the notice in Regular Darkhast No. 30/2015 that was sent in his name at his village address that his son informed him about the consequence of the dismissal of the Appeal on 16/8/2012.

5. Learned counsel for the petitioners would submit that the delay in approaching the Appellate Court was not at all deliberate or intentional. He would submit that at the relevant time the applicant - Sadashiv Genba Jagtap was 86 years of age and was not keeping good health. He was residing with his son at Satara. The plaintiff filed a suit for declaration and possession. The possession of the suit property is with the defendants. Moreover, learned counsel would now submit that the applicant - Sadashiv Genba Jagtap has expired and his legal heirs are on record.

6. Learned counsel for the respondents vehemently opposed the present Petition. He argued in support of the impugned order. He would submit that the Appellate Court has given cogent reasons while rejecting the application. He would submit that the respondents have not at all being diligent in prosecuting the Appeal and despite grant of several opportunities the petitioners failed to remain present and thus there is complete laxity on their part in conducting the Appeal.

According to him, even this delay is not explained by giving proper reasons.

7. I have gone through the order passed by the Appellate Court. The suit was filed by the plaintiff for declaration and possession. The said suit came to be decreed in the year 1997. Thereafter, the Appeal came to be filed which was then prosecuted by Sadashiv Genba Jagtap. As Sadashiv Genba Jagtap was not keeping good health, the Appeal was being looked after his nephew – opponent No.4 – Ravindra Vithoba Jagtap. It is only after the notice of execution was received by Sadashiv's son that they became aware of the Appeal being dismissed for default. No doubt, there is a delay in filing the application for restoration. It is not in dispute that at the relevant time when the application was made, Sadashiv Genba Jagtap was almost 86 years of age. It is averred by Sadashiv Genba Jagtap that he was residing with another son at Satara and he had asked opponent No.4 to look after the litigation. Though there is a substantial delay, in my opinion, the

petitioners should not be deprived of an opportunity of prosecuting the Appeal when the inconvenience caused to the respondent Nos. 1 to 3 – original plaintiffs can be adequately compensated with costs. It is also necessary to put the plaintiffs to terms in so far as co-operating with the Appellate Court in the expeditious disposal of the Appeal considering that the Appeal is of the year 2006.

8. The present Petition is allowed.

9. The impugned order is set aside.

10. The delay in filing the application for restoration of Appeal is condoned subject to payment of cost of Rs.25,000/- by the petitioners to the plaintiffs. The cost to be paid on or before 5/11/2019.

11. The Appeal stands restored.

12. The Appellate Court is requested to hear the Appeal expeditiously and in any event within a period of 3 months from the date of payment of the cost.

13. It is made clear that the petitioners will co-operate with the Appellate Court in expeditious disposal of the Appeal and will not seek unnecessary adjournments.

14. The parties to appear before the Appellate Court on 5/11/2019, at 11.00 a.m.

(M.S.KARNIK, J.)