

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

**SECOND APPEAL NO. 675 OF 2018**  
**ALONGWITH**

**CIVIL APPLICATION NO. 1525 OF 2018**

Rajendra Dashrath More

.....Appellant

V/s.

Tarabai Sonu Gaikwad and Ors.

....Respondents

\* \* \* \*

Ms. Pooja Joshi i/by. Mr. S.R. Ganbavale, Advocate for the appellant.

Mr. Milind M. Sathaye, Advocate for respondent no.1.

Mr. Sangramsingh Yadav, Advocate for respondents no.2 to 7, 19 and 20.

**CORAM : SANDEEP K. SHINDE, J.**

**Thursday, 4<sup>th</sup> April, 2019.**

**P.C. :**

1. Heard learned Counsel for the parties.
2. By this Appeal, the original defendant no.1(c) has challenged the order dated 8<sup>th</sup> October, 2018 passed by the

learned District Judge-3, Malegaon whereby an application for condonation of delay has been rejected.

3. Facts in brief are; against the decree of the trial Court dated 21<sup>st</sup> December 2016, Regular Civil Appeal was registered, presuming it was presented within the period of limitation. The respondents in the said Appeal pointed out to the learned Court that the trial Court has passed the decree on 21<sup>st</sup> December, 2016 and not on 27<sup>th</sup> December, 2016. Having found the submissions were correct, the appellants had filed an application below Exhibit-12 and sought condonation of 15 days delay caused in presenting the Regular Civil Appeal. The said application came to be rejected on 8<sup>th</sup> October, 2018 and thus this Second Appeal.

4. Heard learned Counsel for the parties.

5. Perused the impugned order and the application filed by the appellants for condonation of delay. It appears, inadvertently, that Regular Civil Appeal was presented, as if trial Court had passed the decree on '27<sup>th</sup> December, 2016' instead of '21<sup>st</sup> December, 2016'. Thus, delay of 15 days was caused in presenting the regular First Appeal. Vide

impugned decree, the learned trial Court directed the defendants to remove the construction made by the defendants-appellants, over the suit property and handover vacant possession within three months from the date of the judgment.

6. Thus, considering the nature of the decree and the reasons put forth for condoning the delay, in my view, sufficient cause has been shown for condoning the delay and therefore the Appeal deserves to be allowed and allowing accordingly.

7. That for the reasons stated hereinabove, the impugned order dated 8<sup>th</sup> October, 2018 passed below Exhibit-12 in Regular Civil Appeal No. 22 of 2017 passed by the District Judge-3, Malegaon, Nashik is set aside and Appeal is allowed.

8. It appears that, Regular Civil Appeal against the decree of the trial Court is preferred by all the original defendants, however, the delay condonation application was preferred by one of them, who was defendant no.1(C), the sole appellant before this Court. As to whether the

application by one of the defendants-judgment debtors, was maintainable or not and all issues relating thereto, are expressly kept open which the respondents herein may agitate in appropriate proceedings. With these observations, the Second Appeal is allowed and disposed of.

9. In view of disposal of the Second Appeal, Civil Application No. 1525 of 2018 does not survive. The same is accordingly disposed of.

**(SANDEEP K. SHINDE, J)**