

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

925 APPEAL FROM ORDER NO.8 OF 2020

KAMALBAI BHANUDAS KALE AND OTHERS
VERSUS
GYANA VITHOBA KALE (DIED) AND OTHERS

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Advocate for Appellants : Mr. Gastgar Santosh B.

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CORAM : V. K. JADHAV, J.
DATE : 20.02.2020

PER COURT :-

1. Heard. I find no substance in this Appeal from Order. The appellants are the original defendants. The respondents-plaintiffs have instituted the suit bearing Regular Civil Suit No.474 of 1988 for partition and separate possession. By judgment and order dated 04.02.2003, the Trial Court has decreed the suit. Being aggrieved by the same, the appellants have preferred the appeal bearing Regular Civil Appeal No.58 of 2003. By order dated 11.08.2008 passed by the First Appellate Court, the said appeal was dismissed for want of prosecution. The present appellants have filed the application for restoration of the appeal along with the application seeking condonation of delay bearing Miscellaneous Civil Application

No.32 of 2019. It is the case of the appellants that they were not knowing about the dismissal of the appeal until 05.08.2019 and they came to know about it, when the notice of T.I.L.R., Shirur, Anantpal has received by them for execution of the original decree of partition and separate possession. It has also been contended that the delay has been caused owing to the minority of the appellant Nos.2 and 3. The matter pertains to the immovable property. The learned District Judge-1, Nilanga by impugned order dated 06.01.2020, below Exh.1 in Civil Miscellaneous Application No.32 of 2019, rejected the application. Hence, this appeal against the order.

2. The learned counsel for the appellants submits that only after receiving the notice of execution from the T.I.L.R. Office, the appellants came to know about the dismissal of their appeal. Appellant Nos.2 and 3 were minor at the time, when the appeal was pending before the District Court. Appellant No.1 was illiterate, aged woman. Though there is an inordinate delay in filing of application for restoration of the appeal, the said delay is required to be condoned. In the year 1993, the grandfather of appellant Nos.2 and 3 had executed the Will Deed and the grandfather died in the year 2002. In

terms of the said Will Deed, the appellants would get more share in the ancestral property. Even if, the appellants institute the separate suit then the judgment and decree passed in Regular Civil Suit No.474 of 1988 would come in their way.

3. On going through the impugned order carefully, I find no fault in the order passed by the learned District Judge. It is difficult to believe that the appellants came to know about the dismissal of their pending appeal before the District Court only after receiving the notice from the T.I.L.R. Office. Being aggrieved by the judgment and decree passed in Regular Civil Suit No.474 of 1988, the appellants herein have preferred the appeal bearing Regular Civil Appeal No.58 of 2003. The said appeal came to be dismissed for want of prosecution on 11.08.2008. The appellants herein never bothered to see as to what happened in their pending appeal and in the year 2019 filed the application for restoration of the appeal with an application for condonation of delay of eleven (11) years, two (2) days. Even if, it is considered that there is likelihood of getting more share in the property in the light of the Will Deed executed by the grandfather, however, the grandfather of the appellant Nos.2 and 3 died way back in the year 2002 and that

time the appeal bearing Regular Civil Appeal No.58 of 2003 was pending before the District Court till the year 2008. The learned District Judge has also observed about the incorrect mentioning of age of appellant Nos.2 and 3 compared to the age of the appellant No.1, who happened to be their mother. The appellants have failed to give any cogent and satisfactory reasons for condonation of such an inordinate delay. The learned counsel for the appellant has also admitted that meanwhile the decree passed in Regular Civil Suit No.474 of 1988 came to be executed fully and finally. Thus, considering the entire aspect of the case, I am not inclined to interfere in the order passed by the learned District Judge, Nilanga. Hence, I proceed to pass the following order :

ORDER

The Appeal from Order is hereby dismissed.

(V. K. JADHAV, J.)

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vmk/-