

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

**17 CIVIL APPLICATION NO.11625 OF 2019
IN SA/116/2019 WITH CA/4132/2019 IN SA/116/2019**

**MANISHA ANANDA PATARE
VERSUS
KAMALAKAR ANANDA PATARE AND OTHERS**

Mr. M. S. Kulkarni, Advocate for the applicant.
Mr. Suresh Salgar h/f Mr. N. V. Gaware, Advocate for
respondent Nos. 3 and 4

**CORAM : S. M. GAVHANE, J.
DATED : 27.01.2020**

PER COURT :-

. Applicant who is appellant in Second Appeal No. 116 of 2019 has moved this application to condone delay of 36 days caused in filing civil application for recalling order dated 12/07/2019, dismissing the appeal against respondent No. 1 and to restore appeal against the said respondent.

2. Learned counsel appearing for the applicant submitted that as per order dated 12/07/2019 applicant was to take steps to serve the unserved respondent including respondent No. 1 within two weeks and on failure of the applicant to take steps appeal was directed to be dismissed. As the applicant could not

take steps, appeal was dismissed against respondent No. 1. It is submitted that applicant is fighting for her share in the property. Respondent No. 1 was eariler residing at Mumbai and during pendency of the appeal he was residing at Pune. Now, the applicant has traced out correct address of respondent No. 1. It is submitted that as the applicant was not aware about changed address of respondent No. 1, she could not furnish changed address earlier and hence order dated 12/07/2019 has taken effect. It is submitted that in the above circumstances delay caused in moving this application is not intentional and the same may be condoned and order dismissing appeal against respondent No. 1 may be recalled and appeal be restored against respondent No. 1.

3. Though served with notice of this application respondent No. 1 has not appeared.

4. Considering the submissions made by the learned counsel appearing for the applicant, the grounds of delay referred to above and the fact that at the time of filing present application the applicant has got correct

address in Pune of the respondent No. 1, order dated 12/07/2019 taking effect of dismissal of appeal against respondent No. 1 needs to be recalled by condoning delay and appeal needs to be restored against the said respondent in the interest of justice. Therefore, delay is condoned. Order dated 12/07/2019 is recalled and appeal is restored against respondent No. 1. Application is accordingly allowed.

5. Issue notice before admission in appeal to respondent No.1 on the fresh address given in the application, returnable on 23/03/2020.

[S. M. GAVHANE, J.]