

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

CIVIL APPLICATION NO.7569 OF 2012
IN
SECOND APPEAL (STAMP) NO.31028 OF 2011

VENUBAI NATHRAO DAHIPHALE AND OTHERS
VERSUS
MATHRUABAI SHANKARRAO MUNDHE AND OTHERS

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Advocate for the Applicants : Shri V.C.Patil h/f Shri Bondar U.B.
Advocate for Respondents 1A to 1C : Shri N.D.Kendre h/f Shri Mundhe
Subhash V.

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CORAM: S. M. GAVHANE, J.

DATE :- 15th January, 2020

Per Court:

1 The applicants/ original defendants have filed this Civil Application to condone the delay of 574 days caused in filing the Second Appeal aggrieved by the judgment and decree passed by the learned District Judge on 05.02.2010 in Regular Civil Appeal No.5/2006 filed by them.

2 The learned advocate appearing for the applicants submitted that at the time of filing the Second Appeal, the applicants did not possess the certified copies of the judgment and decree of the Trial Court and the appeal memo of the appellate court. Thus, the objection in that respect was raised by the office in Second Appeal (Stamp) No.12307/2010 filed

by the present applicants only. Thereafter, the applicants applied for the certified copies of the judgment of the Trial Court and the appeal memo of the appellate court on 01.03.2011 and thereafter, the applicants could not come to Aurangabad immediately as the daughter of one of the applicants was not keeping well and there was nobody to look after her. Thereafter, the applicants handed over the certified copies to the learned advocate. But due to the above reasons, the delay was caused. The learned advocate submitted that the delay caused in filing the appeal is not intentional and hence, the same may be condoned.

3 The learned counsel appearing for the respondents opposed to grant the application.

4 I have carefully considered the submissions made by the learned counsel appearing for the parties. It appears that respondent No.1 had filed RCS No.318/1992 and it was partly decreed. Thereafter, the said decree was challenged by both the parties by two different appeals i.e. RCA No.2/2006 and RCA No.5/2006. RCA No.5/2006 filed by the present applicants was dismissed on 05.02.2010 and RCA No.2/2006 filed by the plaintiff was allowed. Therefore, the present applicants filed Second Appeal No.449/2012 aggrieved by the decision in RCA No.2/2006. According to the applicants, while making compliance and removing office objections in Second Appeal No.449/2012, the applicants came to know about the decision in RCA No.5/2006 and therefore, the delay has been

caused.

5 Considering above all circumstances and the submissions made by the learned advocate for the applicants, I find that the delay caused in filing the Second Appeal is not intentional and therefore, it needs to be condoned. As such, this Civil Application No.7569/2012 is allowed in terms of prayer clause "B" and the delay is condoned.

6 The Second Appeal be registered. Shri Kendre, learned advocate holding for Shri S.V.Mundhe, learned advocate, waives notice before admission for the respondents in the appeal.

7 Place Second Appeal No.449/2012 along with this Appeal for admission on 02.03.2020.

kps

(S. M. GAVHANE, J.)

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

SECOND APPEAL NO.449 OF 2012
WITH CA/7568/2012 IN SA/449/2012 WITH CA/10366/2018 IN
SA/449/2012

VENUBAI NATHRAO DAHIPHALE AND OTHERS
VERSUS
MATHRUABAI SHANKARRAO MUNDHE AND OTHERS

...

Advocate for the Appellants : Shri V.C.Patil h/f Shri Bondar U.B.
Advocate for Respondents 1A to 1C : Shri N.D.Kendre h/f Shri Mundhe
Subhash V.

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CORAM: S. M. GAVHANE, J.

DATE :- 15th January, 2020

Per Court:

1 As per the order dated 28.11.2019, it was directed that
"Interim relief, if any operating, to remain in operation till 15.01.2020."

2 Today, the learned advocate for the appellants submitted that
the said order may be continued till the next date.

3 The learned advocate for the respondents submitted that
before the order dated 28.11.2019, the possession of the suit property was
handed over to the respondents in this appeal by the process of the court
on 06.03.2019 and the panchanama to that effect was prepared. He places
on record the copies of the panchanama and possession receipt, which are

taken on record and marked as "X" collectively for identification.

4 Today, both the Second Appeals are placed for admission on
02.03.2020.

5 In these circumstances, it would not be proper to continue the
interim relief.

kps

(S. M. GAVHANE, J.)