

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.4357 OF 2018

Nirmala Dashrath Gaikwad & Ors.

...Petitioners

Vs.

Kamlabai Shamrao Jadhav & Ors.

...Respondents

Mr. R.S. Kale, Advocate for the Petitioners.

Mr. P.P. Kulkarni, Advocate for Respondent No.1.

CORAM : A.S. GADKARI, J.

DATE : 11th MARCH, 2020.

PC. :

. By the present petition, the petitioners/original appellants have impugned Order dated 13th February, 2017 passed below Exh.1, in Civil Miscellaneous Application No.17 of 2013 filed by the petitioners for condonation of delay in filing the application for restoration of Civil Appeal No.105/2005 which was dismissed for non prosecution by an Order dated 6th March, 2012 by the Appellate Court. Though, it is stated in the application for condonation of delay that, there was delay of about 2 months, learned counsel for the Respondent submitted that, as a matter of fact, the delay is about 135 days in filing the said application.

2. Learned counsel for the Respondent submitted that, along with the

condonation of delay application, the petitioner had annexed medical certificate issued by Dr. Narkar of Solpaur, however the said Doctor was not examined by the petitioner, nor her affidavit in support of condonation of delay was produced before the Appellate Court and therefore, the Appellate Court has rightly rejected the application filed by the petitioner for condonation of said delay.

3. Perusal of the said application filed by the petitioner below Exh.1 in Miscellaneous Application No.17 of 2013, would indicate that, sufficient cause is made out for condonation of delay. However, taking into consideration the opposition of the learned counsel for the respondent and in the interest of justice, it will be appropriate that, said application would be allowed subject to condition that, the petitioner pay cost of Rs.10,000/- to the “District Legal Aid Services Committee”. The said cost be deposited with the concerned Authority within a period of two weeks from the date of uploading of the present order on the High Court Website. Payment of cost shall be condition precedent for condonation of delay and setting aside the impugned Order dated 13th February, 2017.

4. In view of above, delay is condoned and petition is allowed in terms of prayer clauses (b) and (c).

[A.S. GADKARI, J.]