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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.13173 OF 2018

Gourabai w/o Siddharam Patil and Anr. ... Petitioners

Versus

Tippanna s/o Basavant Patil and Ors. ...Respondents

Mr. S. S. Inamdar, for the Petitioners.

Mr. A. V. Alange, for the Respondent Nos.1 to 4 and 6 to 11.

CORAM : REVATI MOHITE DERE, J.

DATE : 22nd JANUARY, 2020

P.C. :

1. Heard learned counsel for the parties.
2. By this Petition, the Petitioners have impugned the order dated 13th August, 2018, passed by the learned District Judge – 5, Solapur, in Civil Miscellaneous Application No.348 of 2017, by which, the learned Judge was pleased to reject the petitioners' said application seeking condonation of delay in filing Civil Miscellaneous Application, which was filed for setting aside the order dated 7th August, 2017, by which the petitioners Regular Civil Appeal was dismissed for default and for re-admission of the same.

3. Learned Counsel for the Petitioners submits that the petitioners had shown sufficient cause for condoning the delay caused in filing the Civil Miscellaneous Application. Learned Counsel for the Petitioners states that infact the delay was not 99 days, as mentioned in the application filed for condonation of delay, but only about 68 to 69 days. He submits that the petitioners Regular Civil Appeal No.106 of 2014, was dismissed for default on 7th August, 2017, pursuant to which the petitioners filed a Civil Miscellaneous Application for setting aside the said order dated 7th August, 2017 and for re-admission of the Appeal alongwith an application for condonation of delay, i.e. Civil Miscellaneous Application No.348 of 2017.

4. Learned Counsel for the Respondent Nos.1 to 4 and 6 to 11, opposed the petition. As far as Respondent No.5 is concerned, she has expired and Respondent No.6 is her legal heir. As far as Respondent No.13 is concerned, it is not in dispute that the said Respondent has supported the Respondent Nos.1 to 4 and 6 to 11. It appears that Respondent No.12 was served by private notice and an affidavit of service has been filed to that effect by the learned counsel for the petitioners.

5. Perused the papers. Admittedly, the petitioners and the

respondents are all relatives i.e. they are brothers and sisters. Respondent Nos.1 to 11 are the original plaintiffs in Regular Civil Suit No.62 of 2008, whereas the Respondent Nos.12 and 13 are the original Defendant Nos.3 and 4. The Respondent Nos. 1 to 11 had filed Regular Civil Suit No.62 of 2008 in the Court of the learned Civil Judge, Junior Division, Akkalkot for partition and mense profit. The said suit was decreed by the trial Court vide Judgment and Decree dated 10th March, 2014. All the parties were given equal share in the suit property by the trial Court. However, being aggrieved by the Judgment and Decree, the Petitioners herein challenged the same in Appeal by filing Regular Civil Appeal No.106 of 2014. The Appellate Court dismissed the said Appeal for default on 7th August, 2017. Pursuant thereto, the petitioners filed an application being Civil Miscellaneous Application and sought setting aside of the said order dated 7th August, 2017 by which the petitioners appeal was dismissed for default and prayed for re-admission of the said appeal. Alongwith the said Civil Miscellaneous Application, the petitioners filed Civil Miscellaneous Application No.348 of 2017 and sought condonation of delay of 99 days caused in filing the said Civil Miscellaneous Application.

6. A perusal of the said application sets out the reasons, why the said application was filed belatedly. It *prima facie* appears that the delay is

not of 99 days as contended by the learned counsel for the petitioners but about 68 days. In the said application, sufficient cause has been spelt out for condoning the said delay in filing the Civil Miscellaneous Application for setting aside the order dated 7th August, 2017 and for re-admission of the Appeal. At this stage, learned counsel for the Petitioners states that inadvertently in the prayer clause of the application filed in the Appellate Court, it is wrongly mentioned as Regular Civil Appeal No.104 of 2014, instead of Regular Civil Appeal No.106 of 2014. Learned counsel for the petitioners states that he will take out an appropriate application and will seek amendment of the prayer clause, in Civil Miscellaneous Application, once the delay is condoned.

7. Accordingly the petition is allowed. The impugned order dated 13th August, 2018, passed by the learned District Judge – 5, Solapur, in Civil Miscellaneous Application No.348 of 2017, is quashed and set aside.

8. The delay caused in filing the Civil Miscellaneous Application for setting aside the order dated 7th August, 2017, by which the petitioners Regular Civil Appeal was dismissed for default and for re-admitting the same, is condoned, subject to the petitioners paying the Respondent Nos.1 to 4 and 6 to 11, costs totalling of Rs.5,000/-, within two weeks from today.

The said costs to be deposited in the District Court within two weeks from today.

9. As the delay has been condoned, the learned Judge to direct the Registry to number the Civil Miscellaneous Application filed by the petitioners for setting aside the order dated 7th August, 2017 and for re-admission of the Appeal. The learned Judge to decide the said Civil Miscellaneous Application, as expeditiously as possible, and in any event within four weeks from 3rd February, 2020, on its own merits, in accordance with law. The parties to appear before the trial Court on 3rd February, 2020.

10. Petition is accordingly disposed of on the aforesaid terms.

11. All concerned to act on the authenticated copy of this order.

REVATI MOHITE DERE, J.