

Tandle

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 7630 OF 2019

Jijabai Laxman Korde & Ors.

... Petitioners.

V/s

Sangita Babasaheb Kadam & Ors.

... Respondents.

Mr. S. M. Sabrad for the petitioners.

Mr. P B. Kulkarni for Respondent Nos.1 and 2.

Mr. N .C. Walimbe, AGP for Respondent No.3 – State.

CORAM : A. S. GADKARI, J.
DATE : 12th MARCH, 2020

P. C. :

1. By the impugned Order dated 1st April 2019 passed in Miscellaneous Civil Application No. 81 of 2018 by the learned District Judge-1, Niphad, District Nashik, rejected application for restoration of Civil Miscellaneous Application No. 9 of 2017 preferred by the petitioners for condonation of delay of 53 days in preferring an Appeal against Judgment and Order dated 25th April 2016 in Special Civil Suit No.10 of 2015 by the Civil Judge, Senior Division, Niphad, District Nashik.

2. The said Civil Miscellaneous Application No. 9 of 2017 preferred by the petitioner for condonation of delay for filing of the said Appeal was dismissed for non-prosecution by the the learned District Judge-I, Niphad by its Order dated 19th November 2018. An application for restoration of the said Civil Miscellaneous Application No.9 of 2017

was preferred by the petitioners immediately on 27.01.2018 i.e. within the period of limitation.

A bare perusal of said Miscellaneous Civil Application No. 81 of 2018 would indicate that, petitioners have given sufficient reasons for their non appearance on 19th November 2018.

3. In view thereof, this Court is of the considered opinion that, to grant a reasonable opportunity to the petitioners to pursue the Civil Miscellaneous Application No. 9 of 2017 and in the interest of justice the impugned Order dated 1st April 2019 passed in Miscellaneous Civil Application No. 81 of 2018 needs to be set aside and is accordingly set aside. The Civil Miscellaneous Application No.9 of 2017 is restored to the file of District Judge-1, Niphad.

4. Petition is allowed in the aforesaid terms.

(A. S. GADKARI, J.)