

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 6267 OF 2021

- 1) Sayyed Rijwan s/o. Sayyed Ismail,
Age 42 years, Occ. Agriculture,
R/o. Near Govt. Godown, Thakarbaba,
Patoda, Tq. Patoda, Dist. Beed.
 - 2) Sayyed Imran s/o Sayyed Ismail,
Age 38 years, Occ. Agriculture,
R/o. Near Govt. Godown, Thakarbaba,
Patoda, Tq. Patoda, Dist. Beed.
 - 3) Arefa w/o Sayyed Ismail,
Age 64 years, Occ. Agriculture,
R/o. Near Govt. Godown, Thakarbaba,
Patoda, Tq. Patoda, Dist. Beed.
- ... **Petitioners.**

VERSUS.

- | | | | |
|----|---|-----|---------------------|
| 1) | Najmin Gafur Pathan,
Age 42 years, Occ. Household,
R/o. Masulkar Colony, Trimurti Housing
Society, Building No. 51, Room No. 10,
Pimpri-Pune, Dist. Pune. | | |
| 2) | Ashabai w/o Baban Nagargoje,
Age 38 years, Occ. Agriculture,
R/o. Patoda, Tq. Patoda, Dist. Beed. | ... | Respondents. |

...

Advocate for the Petitioners : Mr Choudhari Sushant B.
Advocate for the Respondent No. 1 : Mr. G.R. Syed.
Advocate for the Respondent No. 2 : Mr. Akshay Jagtap, h/f Mr. A. N.
Nagargoje.

CORAM : MANGESH S. PATIL, J.

DATE : 12.08.2021.

ORAL JUDGMENT :

Heard. Rule. The Rule is made returnable forthwith. Learned advocate Mr. Syed and Mr. Jagtap, learned advocate h/f Mr. Nagargoje

waive service. With the consent of both the sides the matter is heard finally.

2. The petitioners are the original defendants No. 1 to 3 who are aggrieved by the rejection of their application (Exh. 5) for stay is filed in an application for condonation of delay in preferring the appeal against the judgment and decree.

3. After hearing both the sides it transpires that the learned Judge of the Appellate Court has refused to decide the application (Exh. 5) on merits on the ground that the delay was still to be condoned. Though it has been mentioned in the order that the learned advocate for the petitioners was not ready to make submissions even on the application for condonation of delay, in my considered view the approach of the learned Judge was not proper. She could have at the most decided both the applications simultaneously on merits. Be that as it may, since the application (Exh. 5) has not been decided on merits, the impugned order is quashed and set aside.

4. The Appellate Court shall now hear both the sides on 26.08.2021 and decide the application for condonation of delay (Civil Misc. Application No. 169/2020). Depending upon the decision, in case the appeal is directed to be registered by condoning the delay the petitioners shall be at liberty to make a fresh application under Order XLI Rule 5 of the Code of Civil Procedure and thereafter the Appellate Court may decide it on merits.

5. The Rule is made absolute in above terms.

6. The parties shall cooperate the Appellate Court in deciding the Application for condonation of delay.

(MANGESH S. PATIL, J.)

mkd/-