

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

**CIVIL APPLICATION NO.7135 OF 2019
IN
SAST/10615/2019**

**PARMESHWAR VENKATI PANPATE AND ANOTHER
VERSUS
SANGITABAI PRAKASH JADHAV AND OTHERS**

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Advocate for Applicants : Mr. Sunil V. Kurundkar
Advocate for Respondent No.1 : Mr. A. D. Hande
Advocate for Respondent No.3 : Mr. R. N. Chavan.

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CORAM : MANGESH S. PATIL, J.

DATED : 07 APRIL 2022.

PER COURT :

1. This is an application for condonation of delay of 1386 days in filing the second appeal.
2. I have heard the learned advocates of both the sides.
3. The appellants are the original defendant nos. 2 and 3. The respondent nos. 1 and 2 had filed the suit against the respondent no.3 claiming that he was the husband of the respondent no.2 and the respondent no.1 was their daughter and further averred that these appellants were the illegitimate children of respondent no.3. The suit was dismissed. The lower appellate court has reversed the judgment and decreed the suit.

4. It is now being contended that the appellants were minor during pendency of the suit as also in appeal. Their cause was being defended by the respondent no.3 father. Though they had attained majority during pendency of the appeal before the lower appellate court, no amendment was carried out and no fresh notice was issued to them. They got the knowledge about passing of the judgment only after receiving the notice in the execution. Their valuable right to have a share in the ancestral property would be defeated. The delay was not intentional or deliberate and may be condoned.

5. Learned advocate for the respondent nos.1 and 2 strongly opposes the application and submits that the ground being put fourth is not acceptable. The respondent no.3 is the father of the appellants and was defending the cause jointly not only before the trial court but even before the appellate court. The appellants are now conveniently taking a plea of minority. They could have approached the lower appellate court, after attaining the majority. They have not done so. They cannot now be heard for the delay.

6. I have carefully considered the rival submissions and perused the records.

7. It is a matter of record that the appellants were minor not only during pendency of the suit before the trial court, but even during the entire tenure of the appeal before the lower appellate court. The decision was

rendered by the lower appellate court in the year 2015, whereas, presently they are aged 24 and 22 years.

8. If such was the state of affairs, one cannot comprehend any reasons as to why after attaining majority they were not sought to be issued with any notice calling upon them to take appropriate stand. In view thereof, the reason being put-forth by the appellants that they got the knowledge of the decision of the lower appellate court after they were served with the notice in the execution cannot be said to be unbelievable.

9. Considering the nature of the dispute and particularly the question being put up as to their legitimacy, it would be appropriate that they are allowed to prefer the second appeal by condoning the delay.

10. The application is allowed and the delay is condoned, subject to appellants depositing costs of Rs.5000/- in this Court within four weeks from today.

11. The respondent nos. 1 and 2 shall be entitled to claim the costs.

(MANGESH S. PATIL, J.)