

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

**916 CIVIL APPLICATION NO. 12762 OF 2021
IN SAST/34560/2021 WITH CA824/2022 /IN SAST/31490/2021**

**TUKARAM RAMCHANDRA KOLI DECEASED THROUGH LRS.
LILABAITUKARAM KOLI AND ORS.
VERSUS
SHANTARAM YADAV KOLI AND ORS.**

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Advocate for Applicants : Mr. Sant Kishor C.
Advocate for Respondent No. 1 : Mr. M. M. Bhokarikar.

**CORAM : MANGESH S. PATIL, J.
DATE : 23.03.2022.**

PER COURT :

These are the applications under Section 5 of the Limitation Act, 1963 seeking condonation of delays caused in preferring the second appeals.

2. Pertinently, the respondents had filed a suit for injunction to protect their possession received under agreement of sale. Subsequently one of them filed a suit for specific performance. Both the suits were decided by a common judgment and order. The appellants herein who were the defendants in both the suits challenged the judgment and decree by two separate appeals which again have been decided by a common judgment under challenge in these second appeals.

3. Since there is delay of 918 and 946 days in filing the appeals, these are the applications for condoning the delay.

4. I have heard the learned advocates of both the sides and perused the papers including the reply on behalf of the respondents.

5. The learned advocate for the appellants submits that the appellants were not aware about the decision rendered by the lower appellate court.

Some delay was caused in getting the knowledge. It is only after they were served notice in the execution that they took steps. Even the pandemic has added to the delay. They have further contended that the matter was being looked after by the original defendant No. 1 Tukaram who died. Except one of his legal representatives the others were women and could not promptly prosecute the matters. The dispute pertains to immovable property. They would face a serious prejudice if they are not allowed to file the second appeals. There is every chance of success and the delay be condoned may be by imposing costs.

6. Learned advocate Mr. Bhokarikar for the respondent No. 1 relying upon few judgments and the affidavit in reply submits that the grounds being put forth by the appellants are factually incorrect. They were prosecuting the matters not only before the trial court but even before the lower appellate court. They have deliberately allowed the time to lapse. They had the knowledge of decision in the lower appellate court still did not take prompt steps. There is no sufficient cause and the applications be rejected.

7. I have carefully considered the rival submissions and the papers. It is a matter of record that the parties are litigating since last couple decades over right to the immovable property. The respondents are seeking specific performance. The lower appellate court decided the matter on merits after hearing both the sides and therefore it does not appear that the applicants could put up any excuse regarding lack of knowledge about the date of judgment and order passed by the lower appellate court.

8. But then, simultaneously it is to be borne in mind that there was a huge period of pandemic interregnum. The world had come to standstill. Though the appellant cannot be believed about having acquired knowledge belatedly, this could be one of the major circumstances adding to the cause.

9. Ex facie, there does not seem to be any material to conclude that the

delay was intentional or deliberate. If such is the state of affairs, it would be just and proper to allow the applications by imposing sufficient costs for condoning the delay.

10. The applications are allowed and the delays are condoned subject to the condition that the applicants/appellants deposit Rs. 5000/- (Rs. Five Thousand only) in each of these matters towards costs within two weeks from today.

11. On such costs being deposited the delay shall stand condoned. The respondents shall be entitled to claim the costs.

12. After registration of the second appeals, list those for admission on 21.04.2022.

(MANGESH S. PATIL, J.)

mkd/-