

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

WRIT PETITION NO.15285 OF 2019

**ANNA MAROTI DHOTRE AND OTHERS
VERSUS
NANDABAI MACHINDRA DHOTRE AND OTHERS**

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Advocate for Petitioners : Mr. Vikram S. Kadam
AGP for Respondent – State : Mrs. G. L. Deshpande
Advocate for Respondents No. 1 & 2 : Mr. D. Y. Nandedkar
Advocate for Respondents No. 3 & 4 : Mr. A. S. Kulkarni

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CORAM : NITIN B. SURYAWANSHI, J.

DATE : 11th JULY, 2022

PER COURT :

1. The petitioners are aggrieved by the order dated 14/11/2019 passed by the learned District Judge-1, Vaijapur, in Civil M.A. No.2/2019, thereby rejecting the application filed by the petitioners seeking condonation of delay of 03 months and 06 days in filing restoration petition.

2. Petitioners are the original defendants in Special Civil Suit No.29/2011 filed by the respondents for partition and separate possession, which was partly decreed on 16/02/2016. It is the case of the petitioners that they had instructed their advocate to file appeal, however, the same was not done diligently and there was delay in filing the appeal. M.A.R.J.I. No.14/2017 was filed before the learned District Judge-2, Aurangabad, for condonation of delay

caused for challenging the judgment and decree passed in Special Civil Suit No.29/2011. The learned advocate representing petitioners failed to attend the proceedings M.A.R.J.I. No.14/2017. Therefore, matter was dismissed for want of prosecution on 03/09/2018.

3. After the petitioners got knowledge of the same, by engaging another advocate, the petitioners filed Civil M. A. No. 02/ 2019 and regular civil appeal along with the prayer for condonation of delay of 03 months and 06 days in filing the restoration application. The appellate Court has rejected the said application observing that the petitioners have 'not pressed' the affidavit of applicant No.3 and have placed on record various documents. However, the documents are not proved before the Court. There is no whisper as to why applicant Nos. 4 and 5 (respondent Nos. 4 and 5 herein) did not bother to file application for restoration of appeal within limitation period.

4. Heard the learned advocate for petitioners and the learned advocate for respondents.

5. It is a settled legal position that delay is to be liberally condoned. In the present case, reasonable and fair opportunity needs to be given to the petitioners to contest the appeal filed by

them on merits. Delay of 03 months and 06 days cannot be said to be enormous and huge. Substantial rights of the petitioners are involved in the matter and therefore, appeal filed by the petitioners is required to be heard on merits. The trial Court with a view to give fair opportunity to the petitioners to contest their appeal on merits ought to have condoned the delay by imposing suitable costs. Impugned order, therefore, cannot be sustained.

6. In the result, writ petition is allowed. Impugned order dated 14/11/2019 passed by the learned District Judge-1, Vaijapur, in Civil M.A. No.2/2019, is hereby quashed and set aside. Civil M. A. No.2/2019 is allowed. Delay of 03 months and 06 days in filing restoration application is condoned, subject to the petitioners paying cost of Rs.5,000/- to respondent Nos.1 and 2 in the District Court.

(NITIN B. SURYAWANSHI, J.)