

Ajay

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 15536 OF 2022

Uttam Ganpati Todkar and Anr.

.. Petitioners

Versus

Padma Mahadev Aparadh and Ors.

.. Respondents

.....

- Mr. Vijay Killedar, Advocate for Petitioners.
- Mr. Kuldeep Nikam, Advocate for Respondent No.1.

.....

CORAM : MILIND N. JADHAV, J.

DATE : DECEMBER 23, 2022.

P.C.:

1. Heard Mr. Killedar, learned Advocate for Petitioners and Mr. Nikam, learned Advocate for Respondent No.1 at length.

2. Perused the impugned order dated 16.03.2022. It is contended by Mr. Killedar that in Special Civil Suit No.163 of 2015, *ex-parte* decree was passed by the learned Civil Judge Senior Division, Sangli on 08.11.2019. Petitioners filed Application under Order IX Rule 13 of the Code of Civil Procedure, 1908 for setting aside of the *ex-parte* decree. There was a delay of 14 days in filing the application and hence Petitioners preferred an Application under Section 5 of the Limitation Act which came to be rejected by the impugned order.

3. Reasons given by the learned Trial Court for rejecting the Application for condonation of delay of 14 days is that the Petitioners

did not explain the delay with proper evidence. That the Petitioners did not give reasons for the said delay nor any evidence about the quarrel in their family and that it had affected them mentally and physically. Learned Trial Court refused to believe the bare statement of Petitioner No.1 that there was quarrel in their house and deemed it insufficient.

4. The aforesaid grounds for rejecting the Application for condonation of delay, *prima facie*, are extremely harsh in view of the judgment of Supreme Court in the case of *Esha Bhattacharjee Vs. Managing Committee of Raghunathpur Nafar Academy and Ors.*¹ and guidelines laid thereunder in paragraph No.21 on the basis of the decisions earlier and further guidelines laid down in paragraph Nos.22 thereof.

5. In my view, the impugned order is not sustainable.

6. The impugned order 13.03.2022 stands quashed and set aside.

7. The learned Trial Court is requested to hear the Application under Order IX Rule 13 of CPC within a period of four weeks from today.

8. With the above directions, Writ Petition is disposed.

[MILIND N. JADHAV, J.]

1 (2013) 12 SCC 649