

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.4566 OF 2016

Mr. Maankabai Laxman Kadam & Ors. Petitioners
Vs.
Smt. Smita Dattatray DaphalRespondent

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Mr. Umesh Mankapure for the Petitioners.
Mr. Prasad Avhad i/by Mr. Kuldeep U. Nikam for Respondent
Nos.1 and 2.
Mr. Mandar Limaye for Respondent No.3.

CORAM: SANDEEP K. SHINDE, J.

DATED : AUGUST 23, 2022

P.C.

1. Heard Mr. Mankapure, learned Counsel for the
Petitioners, Mr. Prasad Avhad for Respondent Nos.1 and 2 and
Mr. Limaye learned counsel for the Respondent No.3.

2. The Hon'ble Supreme Court in its decision in **Isha
Bhattacharjee v. Managing Committee of Raghunathpur
Nafar Academy and Ors. 2013(12) SCC 649** has laid down
the principles applicable to an application for condonation of
delay, two of which read as under;

*“(vii) The concept of liberal approach has to
encapsulate the conception of reasonableness and it
cannot be allowed a totally unfettered free play.*

(viii) *There is a distinction between inordinate delay and a delay of short duration or few days, for to the former doctrine of prejudice is attracted whereas to the latter it may not be attracted. That apart, the first one warrants strict approach whereas the second calls for a liberal delineation."*

. In the light of above two principles, let me ascertain whether facts of the case deserve to condone the delay.

3. Briefly stated, in Regular Civil Suit No.22 of 1985, decree of possession, was passed against the predecessor-in-title of the Petitioners. On 4th February, 1997. Regular Civil Appeal No.132 of 1997 instituted by the Petitioners, was dismissed in default on 12th December, 2007. In the meanwhile, decree was put to execution and notices were issued to Petitioners/Judgment Debtors. Whereafter, in April, 2011, Petitioner moved a Miscellaneous Civil Miscellaneous Application No.122 of 2011, to set aside the order dismissing the appeal, by condoning the delay of more than three years caused therefor. The learned Appellate Court rejected that application on the ground that applicants could not show the '*Sufficient Cause*' for condoning the delay. It is against that order, dated 29th March, 2014, this Petition is preferred in July, 2014.

4. In consideration of the facts of the case, in my view, there was inordinate, delay to which the doctrine of prejudice is clearly attracted. Fact cannot be overlooked that, suit in this case was filed in the year 1985 and the decree was passed in 1997. Thus, over a period of twenty-two years, respondents-decree holders, have been deprived of the fruits of decree.

5 For, these reasons, impugned order calls for no interference. Petition is dismissed.

(SANDEEP K. SHINDE J.)