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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
CIVIL APPLICATION NO.932 OF 2018
IN
SECOND APPEAL STAMP NO.17624 OF 2018**

Sandip Ganesh Bhoir & Ors. ... Applicants
V/s.
Nirmala Bhalchandra Bhoir & Ors. ... Respondents

Mr. Virendrasinh V. Tapkir with Mr. V.N. Walawalkar i/b Mr.Amey C.
Sawant for the Applicants.
Mr. Rohit Joshi for Respondent Nos.1 to 4.

**CORAM : S. M. MODAK, J.
DATED : 26TH AUGUST 2022.**

PC:-

CIVIL APPLICATION NO.932 OF 2018

1. Heard learned Advocate Mr.Tapkir for the Applicant instructed by Mr.Walawalakar for the Applicants/Original Plaintiffs and also heard learned Advocate Mr.Rohit Joshi for Respondent Nos.1 to 4. Respondent Nos.5 to 7 are served but they have not appeared.
2. The suit of the Plaintiff for partition and declaration as to release deed was dismissed by the trial Court, the First Appellate Court though confirmed the findings so far as refusal of partition is concerned, the prayer for declaration as to release deed was upheld. The Plaintiff intends to prefer an Appeal thereby challenging the findings as to partition.
3. The judgment was delivered by the First Appellate Court on 31st December 2015, however, due to sickness of wife of Applicant No.1, the Appeal could not filed in time. There is delay of two years and 37 days. Copy of treatment papers are annexed at page 10 to 13.

There is opposition on behalf of Respondent Nos.1 to 4.

4. If nearest member of family is sick, it is only for Applicant No.1 to pay more attention there, so there is sufficient reason for condonation of delay. Applicant No.3 was Plaintiff No.3. He expired and Applicant Nos.1 and 2 are the legal representatives. It is submitted that even though Applicant No.2 was available it is Applicant No.1 who was prosecuting all the proceedings, hence delay has to be condoned subject to costs. Hence the following order is passed :

- (a) The delay is condoned subject to payment of cost of Rs.2000/- to be paid to Respondent Nos. 1 to 4 within period of three weeks.
- (b) Application is disposed of.

Second Appeal No.17624 of 2018

5. Today this Court has condoned delay subject to payment of costs.

6. Learned Advocate for the Appellants assures that they will deposit the costs.

7. The Appellants are the Plaintiffs. They were non suited by the trial Court. The First Appellate Court partly decreed that suit, however, the prayer for partition was not accepted.

8. Issue notice before admission to the Respondents, returnable on 14th October 2022. Learned Advocate Mr. Rohit Joshi waives service for Respondent Nos.1 to 4. Rest of the Respondents be served. Copy of the memo of Appeal and other annexures be supplied to Mr. Joshi.

(S. M. MODAK, J.)