

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

**CIVIL APPLICATION NO. 874 OF 2019
WITH
CIVIL APPLICATION NO. 875 OF 2019
IN
SECOND APPEAL (ST) NO. 31310 OF 2018**

Shankar Amuta Gole (Since Decd.
Thr. His Heirs) Narayan Shankar
Gole and Ors.

...Applicants

vs.

Ramchandra Mahdeo @ Shamrao
Mane (Since Decd. Thr. His
Heirs) Smt. Indubai Ramchandra
Mane and Ors.

...Respondents

Mr. Sharad Bhosale i/b Mr. Dilip Bodake – Advocate for the Applicants.
Mr. P. S. Gole – Advocate for the Respondent Nos.1-A to 1-E.

CORAM : S. M. MODAK, J.

DATE : 26th JULY, 2022

P. C. :-

CIVIL APPLICATION NO. 874 OF 2019

1. Heard learned Advocate for the Applicants and learned Advocate for the legal heirs of contesting Respondent No. 1-A to 1-E. Though Respondent Nos.2 and 3 are served, they have not appeared. His counter claim was allowed. Whereas Appellate Court dismissed it. The said Judgment was delivered on 20th June, 2017.

2. For the reasons stated in the Application, the Second Appeal could not be filed in time and there is a delay of 1 year and 26 days. On account of financial problem, appeal can not be filed in time. It is strongly opposed on behalf of the Respondent Nos.1-A to 1-E. Explanation offered is also denied.

4. There is a reliance on the Judgment in case of *Banarsidas and others Vs. State of U.P. and others reported in AIR 1956 Supreme Court 520*. The Hon'ble Supreme Court refused to condone the delay of 44 days in filing Petition for special leave. There were in all 1352 Petitioners and the amount has to be collected from them and that is why there was a delay. It was not accepted by the Hon'ble Supreme Court.

5. The learned Advocate for the Applicants want to differentiate the facts of the case before the Hon'ble Supreme Court from the facts involved in the present Application.

6. Here the Applicant No.1-A is an Agriculturist, whereas Applicant No.1-B is carpenter and Applicant No.1-C is residing at her matrimonial house. It is submitted that the Applicants have borrowed the amount from two persons i.e. Anil Salunkhe and Rajendra Mandhare. Their affidavits are also filed. Those are every possibility that considering the nature of occupation of the Applicants, they should not be having sufficient funds to incur the expenses of Second Appeal. Their contention about taking loan is also substantiated by supporting affidavit. After reading the observation of the Hon'ble Supreme Court. We may find that they are factual observations.

7. The Applicants have made out the case for condonation of delay.

8. Hence the delay is condoned. The Application is disposed of.

9. Applicants to serve copy of the Second Appeal and annexures prior to the date fixed for hearing the matter for admission.

[S. M. MODAK, J.]