

**IN THE HIGH COURT AT BOMBAY
APPELLATE SIDE, BENCH AT AURANGABAD**

**SECOND APPEAL NO.69 OF 2023
WITH CA/2328/2023 IN SA/69/2023**

**BHAGWAN S/O BABURAO PATIL SINCE DESEASED THROUGH HIS LRS
VERSUS
PRATIBHA SUBHASH NARKHEDE**

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Advocate for Appellant : Mr. Pradeep V. Tapse
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**CORAM : ARUN R. PEDNEKER, J.
DATED : 20/07/2023**

ORDER :

1. By the present second appeal, the appellants are challenging the judgment and order dated 23.12.2022 passed by the learned Ad-hoc District Judge-1, Jalgaon in Civil Misc. Application No. 48/2016, dismissing the application filed for condonation of delay in filing the first appeal. The appellants herein are the original defendants and the respondent herein is the original plaintiff.
2. Respondent/plaintiff filed Regular Civil Suit No. 3/2005 in the Court of Civil Judge, Junior Division, Erondal for registration of the sale deed in respect of the land bearing Gat No. 269/2, admeasuring 52 R. situated at village Babhulgaon, Taluka Dharangaon. On 1.9.2007 the suit was decreed exparte without written statement. On 24.2.2016 the appellants/defendants filed civil appeal along with application for condonation of delay of 8 years, 4 months and 23 days in filing appeal before the Appellate Court against the exparte judgment and decree of Trial Court.
3. The case of the defendants is that suit summons were not properly served on the defendants and that the advocate of the defendants had not informed them about status of the case and the decision of the case was

also not communicated to the defendants. On 3.2.2016 when the defendant was with Talathi of Babhulgaon in order to inquire about his yearly land revenue, the defendant came to know that some permission to sell-out his land has been issued by the concerned revenue authority. Therefore, after due search and inquiry the appellant sought some documents and extract and the appellant realized that the suit is decreed against them exparte. Thereafter, defendants filed the appeal along with the application for condonation of delay before the Appellate Court.

4. From the record, it appears that the defendants appeared through advocate before the Trial Court and sought time to file written statement. Thereafter, on two occasions the advocate sought adjournment for filing written statement. Thereafter, also the advocate failed to file written statement and the trial Court proceeded suit exparte without written statement and the suit is decreed without written statement. Thereafter, plaintiff also filed Regular Darkhast No. 5/2009. The defendant has not filed any objection before the Trial Court and the Trial Court was pleased to execute the registered sale deed as per the decree passed in Regular Civil Suit No. 3/2006. The appellants were not diligent in conducting the matter. The Appellate Court also recorded statement made by the appellant that on 3.2.2016 only the decision of the Trial Court came to the knowledge of the appellants and thereafter, the appellants had applied for certified copies. However, the record indicates that the certified copy of the Trial Court judgment was applied prior to 3.2.2016. Thus, the Appellate Court disbelieved the case of the appellants that on 3.2.2016 the appellants got information about the decision of the suit decreed by the Trial Court.

5. The appellants were not diligent in giving instructions for filing written

statement to advocate in the Trial Court and the matter proceeded exparte. The appellants now cannot blame the advocate for their non diligence in the matter. The appellants were having knowledge of the suit filed before the Trial Court, however, the appellants have not even enquired about the proceedings for long period of time. Thus, the appellants were absolutely negligent in conducting the matter before the Trial Court. In view of the discussion made above, I hold that no error is committed by the Appellate Court in rejecting the application filed for condonation of huge delay of 8 years 4 months and 23 days. In the result, the second appeal is dismissed. In view of the above, civil application filed for stay does not survive and stands disposed of accordingly.

[ARUN R. PEDNEKER J.]

SSC/