

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
BENCH AT AURANGABAD**

**CIVIL APPLICATION NO.1273 OF 2023  
WITH  
CIVIL APPLICATION NO.1274 OF 2023  
IN  
SECOND APPEAL (ST) NO. 33295 OF 2022**

Yasmin Begum Syed Ibrahim and Ors.

**... Applicants**

**Versus**

Aminabi W/o Syed Moinuddin & Ors.

**... Respondents**

...  
Mr. Sanjeev B. Deshpande (Senior Advocate) i/b Mr. Anilkumar B. Dhongde,  
Chetan B. Choudhari, Advocate for the Applicants  
Mr. P. M. Kalani, Advocate for Respondent No.1  
Respondent Nos.2/1 to 2/6, 3 and 4 served  
...

**CORAM : S. G. CHAPALGAONKAR, J.**

**RESERVED ON : 17.07.2023**

**PRONOUNCED ON : 07.08.2023**

**FINAL ORDER:**

1. The applicants seek to condone the delay of 277 days caused in filing the second appeal, thereby assailing the judgment and order dated 10/12/2021, passed by the learned District Judge, Parbhani, in Regular Civil Appeal No.163/2014, thereby confirming the judgment and decree dated 03/11/2014, passed by 2<sup>nd</sup> Joint Civil Judge, Senior Division, Parbhani, in Special Civil Suit No.33/2005.

2. The applicants are the original defendants in Special Civil Suit No.33/2005 that was instituted before the Civil Judge, Senior Division, Parbhani, seeking the relief of declaration, perpetual injunction, share and possession. The respondent no.1, namely, Aminbi Syed Moinuddin is the original plaintiff. She claims to have share in the suit property based on 'Hibanama' executed by Halimabai. According to respondent no.1, the land from Gat No.175 was owned by Halimabai in pursuance of a compromise decree in Special Civil Suit No.24/1981. The Halimabai due to love and affection allotted the said land in her favour. The suit was contested by the defendants. The Trial Court partly decreed the suit and declared that the plaintiff is the owner of Gat No.175 to the extent of 14 acres of village Parbhani as per boundary shown in the map. The defendants are also permanently restrained from disturbing peaceful possession of the plaintiff. Apart from that, the decree of partition is passed in respect of other properties.
3. The defendants aggrieved by the aforesaid decree preferred an appeal bearing Regular Civil Appeal No.163/2014 before the District Court, Parbhani. However, the said appeal came to be dismissed vide judgment and order dated 10/12/2021.

4. Thereafter, the applicants have filed second appeal along with present application seeking to condone the delay of 277 days. It is stated that the applicants are illiterate persons. They had no communication from their Advocate regarding the final order passed by the Appellate Court. When they got the knowledge, they contacted the Advocate and collected necessary papers. Thereafter, they approached the Advocate at Aurangabad, who took his own time to draft the appeal and he had passed instructions to arrange the court fees and expenses. The applicants are financially weak and for arranging the amount, some time is consumed, as such the delay caused in filing the appeal is not intentional.
5. Mr. Deshpande, learned Advocate appearing for the applicants would submit that the judgment of the Appellate Court has been passed on 10/12/2021. As per the general directions issued by the Supreme Court in Miscellaneous Application No.21/2022 in Suo-Motu Writ Petition (C) No.3/2020, the limitation period has been extended till 28/02/2022. The limitation period will run from 01/03/2022 since the limitation which expired during the period from 15/03/2020 till 28/02/2022 has been excluded. He would further submit that the period of limitation will have to be counted from 01/03/2022. If this period is considered, the explanation tendered by the applicants can be accepted.

6. Mr. Kalani, learned Advocate appearing for respondent no.1 – original plaintiff opposes the prayer. He submits that the delay caused in filing the appeal is intentional. The defendants were dealing with the property after passing of the order by the District Judge in the appeal till filing of the present application along with appeal. He submits that certain documents like relinquishment deed have been executed inter-se between the applicants which shows that they were conscious of the order of District Court and could have approached this Court in time.
7. Having considered the submissions advanced, it can be gathered that the parties are litigating for civil rights. The respondent – plaintiff is claiming right in the property to exclusion of others on the basis of 'Hibanama'. It is pointed out that the plaintiff / respondent no.1 did not enter into the witness box. It is also pointed out that there is no discussion regarding the evidence of the defendants. Be that as it may. Considering the extension of limitation for Corona period under the general order of Supreme Court and fact that the parties are litigating for civil rights, it would be appropriate to condone the delay with compensatory costs to respondent no.1. The explanation tendered by the applicants appears to be plausible. It is difficult to accept the contentions of the respondents that there is deliberate

delay. In that view of the matter, this Court proceeds to pass the following order:

**ORDER**

- (i) Civil Application is allowed and the same is disposed of accordingly.
- (ii) The delay of 277 days caused in filing the appeal is condoned, subject to the cost of Rs.15000/- to be paid by the appellants to respondent no.1 - original plaintiff within a period of 45 days from the date of this order.
- (iii) On depositing of such costs, appeal be registered.

**[S. G. CHAPALGAONKAR]**  
**JUDGE**

Sameer