

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

WRIT PETITION NO. 4999 OF 2022

Balaso Rajaram Sutar and ors ... Petitioners

vs.

Shivaji Pandurang Sutar and ors ... Respondents

Mr. D. D. Rananaware a/w Mr. Manjeet Lotankar for
Petitioners.

Mr. Nikhil Pawar for Respondent Nos.1 to 7.

CORAM : SANDEEP V. MARNE, J.

DATED : 25 JANUARY, 2023

P.C. :-

1. By this Petition, Petitioners assail order dated 15 November 2021 passed by the Adhoc District Judge-1, Islampur on application below Exh.1 in Misc. Civil Application No.6 of 2021 by which the Trial Court has condoned the delay of 6 years and 68 days in filing application for restoration of Appeal.

2. The Appeal of Respondents came to be dismissed in default on 1 November 2014 on account of non payment of process fees for issuance of notice to Respondents therein. Respondents filed the application for restoration as well as for condonation of delay of 6 years and 68 days. The District

Court proceeded to allow the application and has condoned the delay in filing the application for restoration of Appeal.

3. The learned counsel appearing for Petitioners submit that the delay in filing the application for restoration of Appeal is inordinately long. Petitioners have undertaken construction on the concerned property which has been completed during the period of 6 years and 68 days. He would submit that despite of noticing on going construction, Respondents did not bother to verify the progress in their Appeal. He would further submit that the parties are residing in the same village. It is impossible to believe that Respondents did not contact their advocates for such undue long period of 6 years and 68 days. He relies on the judgment of the Apex Court in ***Majji Sannemma @ Sanyasirao Versus Reddy Sridevi and others***¹

4. The learned counsel appearing for Respondents would oppose the Petition and support the order passed by the District Court.

5. The Suit filed by Respondents came to be dismissed by

¹ 2021 DGLS(SC) 976

the Trial Court on 7 August 2012. Respondents preferred Regular Civil Appeal No.137 of 2012 in the Court of District Judge, Islampur, District Sangli. However, the Appeal was pending for compliance possibly on account of non payment of process fees by the advocate. The Trial Court proceeded to dismiss the Appeal for default by order dated 1 November 2014. Respondents applied for restoration of Appeal after delay of 6 years and 68 days.

6. The District Court considered the fact that the Appeal came to be dismissed on account of mistake on the part of advocate in not taking necessary steps in Appeal. The Suit was filed by Respondents for partition. Considering the above facts, the Appellate Court has proceeded to condone the delay in filing the application for restoration.

7. The learned counsel appearing for Petitioners strenuously contended before me that as equities are created in favour of Petitioners and during the intervening period Petitioners have undertaken work of construction of house and have completed the same. He has also produced the photographs of such construction. However, perusal of reply

filed by Petitioners opposing the application for condonation of delay shows that such a contention about construction of house was not raised in that reply. Reliance of leaned counsel for Petitioners on the judgment of Apex Court in ***Majji Sannemma @ Sanyasirao*** (supra) is of little assistance as the issue involved in that case was about delay in filing the Second Appeal. In the present case, this Court is concerned with the issue of condonation of delay in filing the application for restoration of Appeal which has been dismissed essentially on account of mistake on part of the advocate in not paying the process fees. Respondents came up with a specific case that the advocate did not inform them about dismissal of Appeal. Petitioners did not place anything on record to show that Respondents otherwise acquired knowledge about dismissal of Appeal before filing of application for restoration.

8. The order passed by the District Court does not suffer any infirmity. Writ Petition is devoid of any merits, the same is dismissed with no order as to costs.

(SANDEEP V. MARNE, J.)