

R.M. AMBERKAR
(Private Secretary)

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 5973 OF 2019

Nav Tarun Shri Hanuman Mandir Committee,
Utsav Committee & Ors. .. Petitioners

Versus

Barkibai Janu Konkar
(since deceased) through Heirs and LR.
Gurunath Janu Konkar & Anr. .. Respondents

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• Mr. D.J. Deshmukh for Petitioners
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CORAM : MILIND N. JADHAV, J.

DATE : JANUARY 18, 2023

P.C.:

- 1.** Heard Mr. Deshmukh, learned Advocate for Petitioners.
- 2.** Perused the impugned order dated 14.12.2018 passed in Civil Misc. Application No. 8 of 2017 by the learned Appellate Court. Petitioners filed Application seeking condonation of delay being Civil Misc. Application No. 8/2017 in filing the Appeal against the substantive judgment and decree passed in RCS No. 450 of 2003 by the Joint Civil Judge Senior Division, Kalyan.
- 3.** It is contended by the Petitioners that though the judgment was passed on 19.01.2016, they were unaware of the same and that only in December 2016 when during the organization of Shri. Dnyaneshwar Parayan Puja, Respondent Nos. 1 and 2 arrived and threatened the Petitioners and Petitioners gained knowledge of

passing of the judgment and order dated 19.01.2016 for the first time. Petitioners have further contended that thereafter they approached their Advocate who appeared for them in the Trial Court, but the said Advocate was evasive in giving reply to the Petitioners.

4. I have perused the Civil Misc. Application filed by the Petitioners. Perusal of the impugned order reveals that the learned Appellate Court has taken into consideration the averments made by the Petitioners in the said Application. However, the learned Appellate Court has dismissed the Civil Misc. Application by holding that Petitioners have not mentioned any specific incident or event in order to show that they had attempted to seek information about the proceedings in the Trial Court from their Advocate. It is seen that Petitioners are on the legal welfare committee looking after the affairs of one Hanuman temple in the vicinity. In view of the submissions made by Mr. Deshmukh and the averments made in the Civil Misc. Application, I find that the impugned order rejecting the Application is harsh and deserves to be set aside.

5. Mr. Deshmukh would fairly submit that there is a delay of 288 days which is required to be condoned. By taking into account the reasons given by the Petitioners in the Civil Misc. Application, I am inclined to accept the submissions made by Mr. Deshmukh.

6. In view of the above, the following order is made:-

- (i) Order dated 14.12.2018 passed in Civil Misc. Application No. 8/2017 is quashed and set aside;
- (ii) The delay caused in filing the Appeal against the judgment & order dated 19.01.2016 in RCS No. 450/2023 is condoned subject to the Petitioners paying cost of Rs. 5,000/- to the Kirtikar Law Library, High Court, Mumbai within a period of one week from today. Payment of cost is condition precedent.
- (iii) On payment of cost and production of receipt thereof on record, Civil Misc. Application No. 8/2017 stands allowed. Learned Appellate Court is directed to register and number the Civil Appeal filed by the Petitioners against the judgment and order dated 19.01.2016.

7. With the above directions, Writ Petition is disposed.

8. Though the Writ Petition is disposed, it be placed on board on **25th January, 2023** for placing on record the receipt in respect of costs paid to the Kirtikar Law Library, High Court, Mumbai. To be placed under the caption 'for Compliance'.

[MILIND N. JADHAV, J.]

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