

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

**APPEAL FROM ORDER NO.238 OF 2016
WITH
CIVIL APPLICATION NO.38 OF 2017**

Annappa Laxman Wadar since deceased
by legal heirs

Shrikant Annappa Wadar & Ors.

... Appellants

Versus

Housabai Mahadev Wadar since deceased
by legal heirs

Dagdu Mahadev Nagavkar & Ors.

... Respondents

...

Mr. Sandeep S. Koregave, for Appellants.

Mr. Vijay Killedar, for Respondent.

Mr. Nikhil Pawar for Respondent No.3A.

...

CORAM : SANDEEP V. MARNE, J.

DATE : 06 DECEMBER 2023.

P. C.:

. By this Appeal Appellant challenges Order dated 01 September 2015 passed by the Additional District Judge-1, Kolhapur rejecting Application for condonation of delay in filing Application for restoration of the Appeal. I have heard Mr. Koregave, the learned counsel appearing for Appellant and Mr. Killedar, the learned counsel appearing for Respondent.

2. It appears that the Appeal came to be dismissed for default on 29 January 2007. After dismissal of the Appeal Plaintiffs filed execution proceedings. Admittedly Appellants participated in the execution proceedings and opposed the same. After delay of more than 03 years, Application for restoration of the Appeal was filed on 25 October 2010. Curiously in the Application seeking restoration of the Appeal as well as in the Application seeking condonation of delay, Appellant did not disclose the fact that execution proceedings were filed and that they had participated in the execution proceedings. That fact that Appellant participated in the execution proceedings would indicate acquisition of knowledge about the dismissal of the Appeal. However suppressing the fact that Appellants appeared in the execution proceedings, they made false statement in the Application for condonation of delay that they were not aware about the dismissal of the Appeal for default. Such conduct would not come to the aid of the Appellant. Appellant could not have suppressed the factum of acquisition of knowledge about dismissal of Appeal while seeking condonation of inordinate delay of 3 long years.

3. In my view no case is made out for interference by this Court in the well reasoned Order passed by the District Judge refusing condonation of delay. Appeal being devoid of merits is dismissed without any order as to costs. Since the Appeal is disposed of nothing survives in the Civil Application and it is also disposed of.

SANDEEP V. MARNE, J.