

SA Pathan

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

WRIT PETITION NO.3107 OF 2023

Krishna Alias Kisan Rama Kale
Through his Legal Representatives
Somnath Krushna Kale & Ors

... Petitioners

V/s.

Alka Bhagwan Kale & Ors

... Respondents

SHABNOOR
AYUB
PATHAN

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Mr. B. S. Nayak, for petitioners.

Mr. Sachin S Punde, for respondent No.2a to 2d & 3.

CORAM : AMIT BORKAR, J.

DATED : OCTOBER 3, 2023

P.C.:

1. By this writ petition under Article 227 of the Constitution of India, the petitioner is challenged the order dated 25 February 2015 passed by the Appellate Court rejecting application for condonation of delay of 6 years, 6 days.
2. Respondent No.1/original plaintiff had filed Special Civil Suit No.961 of 1999. The Trial Court decreed the suit on 22 June 2006.
3. The petitioner on 6 August 2012 filed appeal along with Miscellaneous Application No.664 of 2012. The application was for condonation of delay of 6 years, 6 days.
4. The Appellate Court by order dated 25 February 2015

rejected the application holding that the reason pleaded is not a sufficient cause within the meaning of Section 5 of the Limitation Act, 1963.

5. Aggrieved by the order dated 25 February 2015, the petitioner has filed the present writ petition on 31 January 2023. The explanation for laches in filing the writ petition is the same which is mentioned in the application for condonation of delay that the petitioner is suffering from paralysis since 1993 and thereafter, there was lock down due to Covid-19 pandemic.

6. On perusal of the application for the cause pleaded by the petitioner that he is paralytic patient since 1993 is held to be not sufficient cause by the Appellate Court.

7. In the facts of the case, considering the nature of decree passed by the Trial Court, in my opinion, the exercise of discretion by the Appellate Court cannot be termed as perverse.

8. Moreover, the writ petition is filed after 7 years. The explanation of petitioner being paralytic and lock down due to Covid-19 pandemic is not sufficient to explain laches in filing petition. Therefore, in my opinion, the cause shown in the petition and in the application of condonation of delay cannot be termed (sufficient cause) under Section 5 of the Limitation Act, 1963.

9. The writ petition is, therefore, dismissed. No costs.

(AMIT BORKAR, J.)