

Nikita

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

WRIT PETITION NO.900 OF 2021

Ramchandra Dhondiba Vanmane & Ors. ... Petitioners

V/s.

Mayabai Ramchandra Vanmane & Anr. ... Respondents

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Date: 2023.10.10
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Mr. Surel S. Shah, for the Petitioner.

Mr. V.S. Talkute for Respondent No.1 and 2.

CORAM : AMIT BORKAR, J.

DATED : OCTOBER 9, 2023

P.C.:

1. By this petition under Article 227 of the Constitution of India, the petitioners are challenging order passed by the Lower Appellate Court rejecting application for condonation of delay in filing application for restoration of appeal arising out of decree for partition.

2. The respondents filed regular Civil Suit No.26 of 1996 on 29th June 1996. By Judgment and decree dated 24th April 2003 the Trial Court decreed the suit.

3. The petitioners filed Civil Appeal No.116 of 2003 on 15th July 2003. However on 24th April 2014 appeal was dismissed in default as steps to serve notice on respondents was not taken.

4. On 28th September 2016, the petitioners filed application for

restoration along with the application for condonation of delay. The delay was of 28 months. The reason furnished in the application was that the petitioners are laborers and in draught situation were working in the State of Goa from 2013 till 2016.

5. The application for certified copies was filed on 8th September 2016. The petitioners received the copies on 20th September 2016 and thereafter filed application on 28th September 2016. Having considered the nature of suit, in my opinion, valuable rights of the parties over immovable properties are involved. Hence, it is necessary in the interest of justice that the appeal needs to be decided on merits. The first appeal being statutory appeal on facts and law, it is necessary that such proceedings needs to be decided on merits. The reason stated by the petitioner needs to be construed liberally considering the status of the petitioners. However, prejudice caused to the respondents can be compensated in terms of money by imposing cost. Hence, following order.

- a) Impugned order dated 23rd January 2020, passed by Ad-hoc District Judge-1 Pandharpur, in Miscellaneous Application No.145 of 2016 is set aside.
- b) Civil Appeal No.116 of 2003 is restored on the file of the District Court.
- c) Considering the facts that the decree in favour of respondents was passed in 2003, the District Court shall decide the appeal as expeditiously as possible and in any case within three months from today.

- d) The parties shall appear before the District Court on 16th October 2023, at 11.00 A.M.
 - e) Mr. Talkute, learned advocate for the Respondents state that the respondents shall provide proper private paper book. The respondents shall file private paper book within period of three weeks from today.
 - f) On such paper book being filed, the Trial Court shall proceed to decide the appeal on merits.
 - g) Considering the facts of the case, the petitioner shall pay to the respondents Rs.5,000/- within four weeks from today.
 - h) Payment of cost shall be condition precedent in hearing of appeal.
6. The writ petition stands disposed of in above terms. No costs.

(AMIT BORKAR, J.)