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

**INTERIM APPLICATION NO. 20326 OF 2022
IN
SECOND APPEAL (ST) NO. 11934 OF 2022**

Siddharam Virpakshappa Bhusanure & Anr. ...Applicants
Versus
Chandrakant Shivlingappa Hippargi ...Respondent

Ms. Shruti Tulpule, for the Applicants.

Mr. A. B. Tajane a/w. Ms. Kavita P. Shinde, for the Respondent.

**CORAM : MADHAV J. JAMDAR, J.
DATED : 26th JULY 2023**

P.C. :

1. This Interim Application is taken out for condonation of delay of 6 years and 200 days in filing the Second Appeal.
2. It is the contention of the Applicants that they have engaged an Advocate in Second Appeal No.741 of 2015 which has been filed by the present Respondent-Plaintiff challenging the same impugned Judgment and Decree. It is submitted that in fact, the said Advocate

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was also instructed to file Second Appeal. It is the contention of the Applicants that the Second Appeal No.741 of 2015 filed by the present Respondent has been admitted by order dated 13th October 2015 and thereafter, the Civil Application was filed in said Second Appeal was taken up for hearing and by order dated 26th August 2016, the same was disposed of.

3. It is the contention of the Applicants that during the said period, they contacted the learned Advocate and he informed them that the Second Appeal filed by the present Respondent was pending for admission and that he had filed the Second Appeal on behalf of the Applicants. In 2017, the injunction writ was served on the Applicants and therefore, immediately they contacted learned Advocate and he assured that necessary steps would be taken to get the interim relief modified/vacated. Thereafter, in January-2020, the Applicants received letter dated 9th December 2019 of widow of said Advocate engaged by them informing that the said Advocate had passed away on 30th November 2019 and requesting them to collect the papers. The Applicants state that subsequent to January-2020, they came to know that the Second Appeal was not filed on their behalf by the concerned

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learned Advocate.

4. The Applicants have contended that they are the agriculturists and therefore, they have completely relied on their Advocate. It is further stated in the application that due to COVID-19 pandemic, they could not travel to Mumbai and therefore, present application has been filed on 2nd May 2022.

5. Learned counsel appearing for the Respondent strongly opposes the application. In the reply, in paragraph 21 on page 30 with respect to paragraph 6 of the Interim Application, it is stated that the statements are vague and baseless and the said allegations are made against the former Advocate. However, there is no basis for the said contention. The Applicants have given the relevant details. The fact that widow of the concerned Advocate sent letter to the Applicants informing about the death of learned Advocate and informing them to collect the papers of Second Appeal No.741 of 2015 clearly show that the matter was entrusted to the learned Advocate. Order dated 26th August 2016 passed by a learned Single Judge in Civil Application No.1594 of 2015 in Second Appeal No.741 of 2015 clearly show that the learned Advocate was absent. Office note in Second Appeal No.741 of 2015

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shows that the learned Advocate has filed Vakalatnama on 16th December 2015 and inspite of that, he was absent on 26th August 2016. Therefore, there is substance in the contention raised by Ms. Shruti Tulpule, learned counsel appearing for the Applicants and sufficient reasons are set out. The Applicants should not suffer for the mistake committed by their Advocate.

6. At this stage, learned counsel appearing for the Respondent states that the Respondent has no objection for condonation of delay, subject to payment of cost.

7. Accordingly, the Interim Application is allowed in terms of prayer clause (a), subject to payment of cost of Rs.5,000/-. The said cost be paid to the Respondent within a period of four weeks from today.

[MADHAV J. JAMDAR, J.]