



IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

CIVIL REVISION APPLICATION NO. 47 OF 2024

1. Sau Sumanbai Vasantrao Mali,
Age : 56 years, Occ. : Agriculture & Household,
2. Sau Pramilabai Suresh Mali,
Age : 52 years, Occ. : Agriculture & Household,

Both R/o. : Chaugaon, Tq. & Dist. Dhule

... APPLICANTS

(Ori. Respondents)

VERSUS

1. Babulal Ramdas Shinde,
Age : 60 years, Occ. : Agriculture,
R/o. : Chaugaon, Tq. & Dist. Dhule,
2. Smt. Saralabai Ramesh Shinde,
Age : 48 years, Occ. : Agriculture,
R/o. : Chaugaon Tq. & Dist. Dhule,
Presently R/o. : Plot No.41, Jalganga Society,
Opposite Laxminarayan Garden,
J.K. Thakare Marg, Sakri Road, Surat
Bypass, Dhule Tq. & Dist. Dhule

... RESPONDENTS

(Ori. Appellants)

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Mr. H.V. Tungar – Advocate for Applicants

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CORAM : SANDIPKUMAR C. MORE, J.

DATE : 13th March, 2024

ORDER :

1. Heard learned Counsel for the applicants on admission stage.
2. The applicants who are the original plaintiffs in the Regular Civil Suit no.1 of 2020 and the respondents in Civil Miscellaneous Application No.65 of 2023 have challenged the order dated

19.07.2023 passed by the learned First Appellate Court i.e. District Judge – 1 at Dhule in the aforesaid Civil Miscellaneous Application. Under the impugned order the learned First Appellate Court has condoned the delay of 11 months and 10 days occurred in filing civil appeal by the present respondents who are original defendants in the aforesaid suit.

3. Learned Counsel for the applicants submits that, despite there being any sufficient cause the learned First Appellate Court has erroneously condoned the delay in filing First Appeal by the present respondents. According to him, the present respondents/defendants had already served with suit summons but they did not care to appear in the said suit and, therefore, the suit was decreed by the learned Trial Court i.e. Joint Civil Judge Junior Division, Dhule on 25.03.2022. According to him, the learned First Appellate Court by considering the negligent approach of the respondents should have dismissed their delay condonation application.

4. Admittedly, on perusal of the impugned order it is evident that, suit of the present applicants was decreed *ex-parte* on 25.03.2022. The present respondents had contended in the Civil

Miscellaneous Application that, one of them was suffering from ailment and was not able to walk properly and one of them is widow and serving in Health Department and therefore could not prosecute the suit diligently. It is extremely important to note that, the learned First Appellate Court has allowed the delay condonation application by observing that, superior Courts from time to time have taken liberal view specially while dealing with the delay condonation application by keeping in mind the principles of natural justice. Moreover, the filing of appeal against decree passed on merit or *ex-parte*, is statutory right of the party and, therefore, the delay for filing such appeal has to be considered leniently. Further, it is important to note that, though the learned First Appellate Court has condoned the delay but for negligence of the present respondents it has also imposed cost of Rs.5000/- (rupees Five Thousands only). Therefore no perversity can be seen in the order passed by the learned First Appellate Court. As such, the application is dismissed at admission stage itself.

5. The Civil Revision Application is accordingly disposed of.

[SANDIPKUMAR C. MORE]
JUDGE