



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

SECOND APPEAL NO. 575 OF 2023

Mahananda Baburao Kalge and others .. Appellants

Versus

Sarika @ Sangita Santosh Mathpati .. Respondent

Mr. Suniket A. Kulkarni, Advocate for the Appellants.
Mr. Sunil M. Vibhute, Advocate for Respondent.

**WITH
CIVIL APPLICATION NO. 14447 OF 2023
IN SA/575/2023**

CORAM : R. M. JOSHI, J.

DATE : 24th JANUARY, 2024.

PER COURT :-

. This appeal is preferred against the order dated 12.10.2023 passed by the First Appellate Court refusing delay of 120 days caused in preferring appeal against the judgment and decree passed in R.C.S. No. 457/2019.

2. The learned counsel for the appellants submits that, the First Appellate Court has failed to taken in consideration the dispute between the parties pertains to the partition of the properties. According to him, it is also ignored by the First Appellate Court that the suit was tried during the Covid-19 pandemic period. It is his

submission that, the findings are recorded by the First Appellate Court that the learned advocate for the defendants appeared before the Court on number of occasions will not be sufficient to hold that the defendants having the knowledge of the same. According to him, delay is not deliberate and nevertheless it is not inordinate delay in order not to condone the same.

3. The learned counsel for the contesting respondent/original plaintiff opposes the application. His submission is that, no sufficient ground is made out for condonation of delay.

4. I have perused the findings recorded by the First Appellate Court in paragraph Nos. 14 to 16. The original suit was filed in October 2019 and was decided on 13.10.2022. During this period undisputedly Covid-19 pandemic situation existed. Though by October 2022, things were normalized, however, considering the age of the appellant No. 1 who was aged about 70 years there is reason and justification to accept her reason that she has no contact with her advocate. Certainly, delay is not inordinate. All these facts ought to have been considered by the First Appellate Court while considering the application for condonation of delay.

5. This Court therefore finds perversity in the findings recorded by

the First Appellate Court in refusing to entertain the application for condonation of delay which is substantial question of law. Having regard to aforesaid facts, subject to cost of Rs. 2,000/- (Rs. Two Thousand only) payable to the plaintiff impugned order dated 12.10.2023 is set aside. The Civil Miscellaneous Application No. 6/2023 stands allowed.

6. The cost be paid in the First Appellate Court within a period of four (04) weeks from today. If cost is not paid or deposited within four (04) weeks, this order shall stand vacated. The first appeal be registered on compliance of this order.

7. In view of the above, second appeal stands allowed.

8. Pending Civil Application No. 14447/2023 also stands disposed of.

(R. M. JOSHI, J.)

PS.B.