

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**  
**CIVIL APPELLATE JURISDICTION**  
**SECOND APPEAL NO. 572 OF 2022**

|                                   |                |
|-----------------------------------|----------------|
| Datta Govind Darge And Ors.       | ...Appellants  |
| Versus                            |                |
| Ramkrushna Vithoba Darge And Ors. | ...Respondents |

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**Mr. Pratik B. Rahade**, for Appellant.  
**Ms. Shruti Tulpule**, for Respondent No.4.

....

**CORAM : SANDEEP V. MARNE, J.**

**DATED : 31 JANUARY 2024.**

**P.C. :**

By the present Appeal, Appellants challenge Order dated 18 February 2021 passed by Extra Joint District Judge and Additional Sessions Judge, Mangaon, District Raigad rejecting Civil Miscellaneous Application No.02 of 2010 filed seeking condonation of delay of 40 days in filing the Regular Civil Appeal against the decree dated 24 October 2019 passed in Regular Civil Suit No.60 of 2016.

2. By Order dated 02 January 2023, this Court has admitted the Appeal by formulating the following question of law :

Whether the Judgment and Decree dated 18<sup>th</sup> November 2021 passed by the learned First Appellate Court is proper, as valid reasons given for condonation of delay are not taken into consideration ?

3. I have heard Mr. Rahade, the learned counsel appearing for Appellant and Ms. Tulpule, the learned counsel appearing for Respondent No.4. Despite being served after admission of Appeal, Respondent Nos.1 to 3 have not appeared in the Appeal.

4. In the present case, the Suit was dismissed by the Trial Court by decree dated 24 October 2019. The Appellant applied for certified copies on 01 November 2019 and received the same on 18 November 2019. The Appeal was filed on 04 January 2020. In that process, delay of 40 days has occurred in filing the Appeal. One of the reasons pleaded by the Appellant for seeking condonation of delay is his sickness. However, the First Appellate Court has held that period of sickness of the Appellant was only for the period from 25 October 2019 to 06 November 2019. Thus, instead of taking a liberal view while deciding the application for condonation of delay, the approach of the First Appellate Court appears to be rigid where the First Appellate Court expected the Appellant to explain each days delay after expiry

of period of limitation up to 24 November 2019. The law of limitation is founded on public policy and some lapse on the part of litigant would not be sufficient to deny condonation of delay as the same would cause miscarriage of justice. The Apex Court has repeatedly held that parties are not expected to explain each days delay. Reference in this regard can be made on the Judgment of the Apex Court in **Sheo Raj Singh Vs. Union of India**, Civil Appeal No.5867 of 2015 decided on 09 October 2023.

5. I am, therefore, of the view that First Appellate Court has erred in rejecting Application for condonation of delay. The question formulated by this Court is answered in the negative. The Order dated 18 November 2021 passed by First Appellate Court is accordingly set aside. The Application for condonation of delay filed by the Appellant is allowed. The Regular Civil Appeal filed by Appellant be registered and decided the same on it's own merits. With the above observations, Second Appeal is allowed. No order as to costs.

**SANDEEP V. MARNE, J.**

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