

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

**INTERIM APPLICATION NO.7527 OF 2024
IN
SECOND APPEAL (STAMP) NO.7311 OF 2024
WITH
SECOND APPEAL (STAMP) NO.7311 OF 2024**

**Halima Abdul Mulla & Anr.
V/S**

....Appellants/Applicants

Salim Gulab Pathan & Ors.

....Respondents

Mr. Dheeraj Patil *for the Appellants/Applicants.*

**CORAM: SANDEEP V. MARNE, J.
DATE : 10 APRIL 2024.**

P.C.:

1 The Interim Application is filed for seeking condonation of delay of 4 years and 337 days in filing the Second Appeal.

2 The Second Appeal is filed challenging the decree passed by the First Appellate Court on 23 November 2018.

3 The only reason pleaded by the Applicants in the Application is that Applicant No.1 is a senior citizen and a poor agriculturist. It is pleaded that the Advocate of the Appellants did not inform them about the decree passed

by the First Appellate Court. That they learnt about the decree only when the same was sought to be executed. The Appellants therefore contacted another advocate in December 2023 and this is how the Appeal is lodged alongwith Application for condonation of delay, after securing certified copy of the impugned decree.

4 The delay in filing the Appeal is inordinate. The Appeal is sought to be filed after delay of almost five long years. The decree passed by the Trial Court grants share to the original Plaintiffs in the joint family property. The Appellants unsuccessfully tested the decree of the Trial Court before the First Appellate Court by filing Regular Civil Appeal No.36 of 2015. This would show that the Appellants were vigilant enough to challenge the decree of the Trial Court dated 23 January 2015 by filing the First Appeal in the year 2015 itself. However after the Appeal was dismissed by the First Appellate Court on 23 November 2018, the Appellants went into deep slumber and did not take any steps for challenging the decree of the First Appellate Court by filing Second Appeal before this Court within a reasonable time. The explanation of advance age of Appellant No.1 and poor financial background are general in nature and these circumstances are not sufficient for condoning inordinate delay of 4 years and 337 days in filing the Second Appeal. The Applicants cannot be permitted to blame their advocate when the responsibility of keeping the tag on the Appeal filed by the First Appellate Court equally rested on the shoulders of the Appellants. The Appeal was lodged by them before the First Appellate Court on 25 February 2015 i.e. immediately after passing

of the decree by the Trial Court on 23 January 2015. It is impossible to believe that the Applicants were unaware about the decree passed by the First Appellate Court on 23 November 2018 for a period of five long years. It was the responsibility of the Appellants to acquire knowledge about progress of the Appeal filed by them.

5 After going through the reasons pleaded in the Application, I am of the view that no case is made out for condonation of inordinate delay of 4 years and 337 days in filing the Appeal. Interim Application filed by the Applicants is therefore **rejected**.

6 With rejection of the Interim Application for condonation of delay, nothing would survive in the Second Appeal which also stands rejected.

(SANDEEP V. MARNE, J.)

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