

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

**INTERIM APPLICATION NO.870 OF 2024
IN
SECOND APPEAL (STAMP) NO.18842 OF 2021
WITH
SECOND APPEAL (STAMP) NO.18842 OF 2021
WITH
INTERIM APPLICATION NO.904 OF 2024
IN
SECOND APPEAL (STAMP) NO.18842 OF 2021**

Dagadu Mhanka Jadhav

....Appellant/Applicant

V/S

Bharat Mhanka Jadhav & Ors.

....Respondents

Mr. Anilkumar Matle i/b Ms. Archana P. Gaikwad *for the Appellant/Applicant.*

**CORAM: SANDEEP V. MARNE, J.
DATE : 4 APRIL 2024.**

P.C.:

1 This Interim Application is filed seeking condonation of delay of 7 years and 340 days in filing Second Appeal against the judgment and decree dated 25 July 2013 passed by the District Court, Solapur dismissing Applicant's Civil Appeal No.76 of 2011. In his Appeal before the First Appellate Court, the Applicant had challenged the judgment and decree dated 20 January 2011 passed by the Civil Judge Junior Division, Mohod in Regular Civil Suit No.112 of 2000. The Trial Court decreed the suit filed by the Plaintiffs and held that

Plaintiff Nos.1 and 2 and Defendant Nos.1 to 4 each have 1/7th share in the suit properties and Plaintiff Nos.3 to 7 jointly have 1/7th share in the suit properties.

2 I have gone through the averments made in the Application for condonation of delay. For seeking inordinate delay of 7 years and 340 days, following explanation is offered in the Application in paragraphs 2 to 5 which read as under:

“2. The Applicant state that there is delay of 8 years 2 days in filing the present second appeal against the order dated 20/07/2013 as the Applicant younger daughter late Miss. Shila Dagdu Jadhav was detected by Cancer in the year 2013 and she died on 08/02/2015. Copy of medical of the late Sheela Jadhav and her death certificate is annexed and marked as **Exhibit-A**.

3. Thereafter, due to the death of younger daughter the Appellant's wife got mental shocked and entire family responsibility was fall on the shoulder of the Appellant. The Appellant's wife late Mrs. Gunabai Dagadu Jadhav was died on 06/02/2021. Copy of death certificate of Gunabai Dagdu Jadhav is annexed and marked as **Exhibit-B**.

4. The Appellant has to incurred lots of expenses towards his daughter and wife's medical. The Appellant even acquired the documents and order by certified which also take time. The Appellant was and is facing financial crises, the time lapsed in the adjustment of amount and the delay occurred in filing the second appeal due to all the aforesaid reasons.

5 The Applicant states that he has excellent case and that there is every likelihood that he would succeed in the present appeal.”

3 Thus the primary reason pleaded by the Applicant for condonation of delay is detection of cancer of his younger daughter in the year 2013 and her death on 8 February 2015. The second reason cited by him is the mental shock to his wife on account of death of his younger daughter leading to entire family

responsibilities being falling on the shoulders of the Applicant. Applicant's wife is pleaded to have been dead on 6 February 2021. The next reason pleaded in the Application is incurring of expenses for treatment of daughter and wife of the Applicant on account of which he allegedly faced financial crises.

4 I do not find any of the three reasons pleaded by the Applicant to be convincing for condoning inordinate delay in filing the Appeal. At the time when the Application is filed by the Applicant in 2021, his declared age was 76 years. His wife has died in the same year on 6 February 2021 when Applicant himself was 76 years old. It therefore appears that the death of Applicant's wife has happened possibly because of old age.

5 Even if the reason of detection of cancer of younger daughter of the Applicant in 2013 is taken into consideration, Applicant's age on that date was 68 years and he himself was senior citizen. At the time when his younger daughter died, his age was 70 years. The age of the daughter who suffered from cancer is not declared but presumably she was adult at the time of her death. It is difficult to believe that the family responsibilities came on shoulders of the Applicant at his advanced age of 70 years after the death of her younger daughter. I therefore do not find the reasons pleaded in the Application to be convincing for condonation of inordinate delay of 7 years and 340 days in filing the Appeal. The Interim Application No.870 of 2024 is accordingly **rejected**.

6 With the rejection of the Interim Application for condonation of delay, the Second Appeal (Stamp) No.18842 of 2021 as well as the Interim Application No.904 of 2024 for stay of the impugned order would not survive and the same are also accordingly disposed of.

(SANDEEP V. MARNE, J.)

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