

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

**INTERIM APPLICATION NO.442 OF 2024
IN
SECOND APPEAL (STAMP) NO.18925 OF 2023
WITH
SECOND APPEAL (STAMP) NO.18925 OF 2023
WITH
INTERIM APPLICATION NO.443 OF 2024
IN
SECOND APPEAL (STAMP) NO.18925 OF 2023**

Pandurang Govind Kakade

Since deceased through Legal Heirs

V/S

Shakuntala Raghunath Kakade

Since deceased through Legal heirs

....Appellants/Applicants

....Respondents

Mr. Pratap P. Bhosale *for the Appellant/Applicant.*

Mr. Suraj S. Ghogare *for Respondent No.1(a).*

CORAM: SANDEEP V. MARNE, J.

DATE : 10 APRIL 2024.

P.C.:

1 This Interim Application is filed seeking condonation of delay of 6 years and 95 days in filing the Second Appeal.

2 The First Appellate Court has allowed the Appeal filed by the Plaintiff and decreed Regular Civil Suit No.114 of 1997 by its judgment and decree dated 2 January 2018. The Appeal was contested by present Appellants by engaging an advocate. Therefore decree passed in the Appeal on 2 January

2018 ought to have been in their knowledge. However the Appellants did not take immediate steps for challenging the decree of the First Appellate Court by filing Second Appeal in this court. The Appeal is sought to be lodged alongwith the present Application in June 2023 after a period of 6 years and 95 days.

3 I have gone through the Application seeking condonation of delay. The broad reasons cited by the Applicants are illiteracy and poverty as well agrarian background of the Applicants. It is stated that the Appellants are senior citizens suffering from various segments. That only Smt. Aruna Yeshwant Mahale was able to understand the exact niceties of the legal proceedings. That she was sick and under treatment of a Doctor. That the Appellants acquired knowledge of passing of the impugned decree by the First Appellate Court only when the Collector started taking steps towards implementation of the decree in Darkhast No.3 of 2021. Appellants have also prayed for exclusion of period from 15 March 2020 till 28 February 2022 on account of Covid-19 pandemic.

4 After going through the reasons pleaded in the Application, it is seen that the explanation sought to be given by the Appellants for condonation of inordinate delay of 6 years and 95 days is vague. Such inordinate delay cannot be sought to be condoned by citing vague reasons of poverty, illiteracy or agrarian background of the Appellants. Though it is contended that Smt. Aruna Yashwant Mahale was sick, no particulars of her sickness are given in the Application. The exact period during which she was sick or taking medical

treatment is again not pleaded. The assertion that the Applicants acquired knowledge about impugned decree of the First Appellate Court after Collector started taking steps towards execution of the decree cannot be believed. Applicants were represented by their Advocate before the First Appellate Court and ought to have secured knowledge about the decree immediately after the same was passed. The reason of Covid-19 pandemic cannot be accepted in the light of the position that in January 2018 the First Appellate Court passed the impugned decree, there was no pandemic. Thus before start of the Covid-19 pandemic, Applicants had more than two years to take steps for filing of the Appeal. Even after the end of pandemic on 28 February 2022, the Appellants did not take any steps for more than one and half years thereafter. I therefore do not find that any of the grounds pleaded in the Application are convincing for condoning inordinate delay of 6 years and 95 days. Only some of the original Defendants have sought to file the present Appeal after delay of 6 years and 95 days. The impugned decree directs partition of the suit properties amongst the parties. I am not inclined to condone such inordinate delay in absence of any proper explanation being pleaded in the Application by the Applicants. The Interim Application for condonation of delay is accordingly **rejected**.

5 With rejection of Interim Application, nothing would survive in the Second Appeal as well as Interim Application for stay and the same are also stands disposed of.

SUDARSHAN
RAJALINGAM
KATKAM

(SANDEEP V. MARNE, J.)

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Page No. 3 of 3