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

WRIT PETITION NO. 15948 OF 2023

Vaijanath Dattatraya Rukari and Ors.

.. Petitioners

Versus

Sandip Balasaheb Bhintade and Anr.

.. Respondents

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- Mr. Drupad S. Patil a/w. Namit Pansare, Advocates for Petitioners.
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CORAM : MILIND N. JADHAV, J.

DATE : JANUARY 03, 2024.

P.C.:

- 1.** Heard Mr. Patil, learned Advocate for the Petitioners.
- 2.** The impugned order dated 16.02.2023 has been passed by the First Appellate Court condoning the delay of 322 days in filing the First Appeal by the original Applicants i.e. Respondents before me. The reasons given in the Application for seeking condonation of delay has been considered by the learned Trial Court and that consideration is reflected in paragraph No.5 of the impugned order. It has also been fairly pointed out by Mr. Patil that the Suit was decreed on 02.07.2016 and during the trial of the Suit also, despite sufficient opportunities given to the Applicants i.e. Respondents, they did not adduce any evidence in rebuttal nor cross-examined the Plaintiffs' witnesses.

3. Perusal of the impugned order shows that cognizance of this fact has also been taken by the learned Appellate Court and so noted in paragraph No.7 of the impugned order. Though admittedly there is a delay of 322 days, the learned Trial Court has proceeded on the basis that due to the negligence and lethargy of the Advocate, the litigant should not suffer the consequences. Mr. Patil has also pointed out that the reasons advanced by the Applicants i.e. original Defendants are false.

4. However, considering the reasons given by the learned First Appellate Court while disposing of Civil Misc. Application No.543 of 2017, the learned Appellate Court has also granted costs of Rs.10,000/- which is my opinion is therefore a balanced order in the facts of the present case as also in the interest of justice. I see no reason to interfere with the reasons given in the impugned order dated 16.02.2023. The order dated 16.02.2023 is thus upheld and confirmed.

5. Resultantly, Writ Petition is dismissed.

[MILIND N. JADHAV, J.]

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