



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

INTERIM APPLICATION NO.768 OF 2024.

IN

FIRST APPEAL (ST) NO.31529 OF 2023.

Shri. Anil Suryakant Desai And Anr.

...Applicants.

Vs

Bhartiya Kala Prasarini Sabha,
Pune And Ors.

...Respondents.

Mr. Kiran S. Bapat a/w. Mr. Avinash H. Fatangare i/b Mr. Sandesh Kate for the Appellant.

Mr. Sujay Gangal for the Respondent No.1.

Mr. Rahul Kadam a/w. Mr. Shardul Diwan for the Respondent No.11.

Coram : Sharmila U. Deshmukh, J.

Date : October 7, 2024.

P. C. :

1. Interim Application has been preferred seeking condonation of delay of 4 years and 10 months in filing the present application.
2. Office noting indicates that the contesting respondent Nos. 9 to 13 are duly served. None appears for the contesting respondents.
3. Learned counsel for respondent No.1 would oppose the application and would submit that there is no sufficient explanation tendered for the delay. Said submission is liable to be rejected as respondent No.1 is an appellant in First Appeal No.1196/2018 which has also challenged the said judgment. There is no warrant for

opposing the present application when the same judgment has been challenged by respondent No.1.

4. Learned Senior Advocate appearing for the applicant would submit that against judgment and order dated 17th October 2018 some of the respondents have filed appeal in the year 2018 and therefore the present applicants were under *bona fide* belief that they are not required to file any separate appeal. He submits that in the meantime, Applicant No.1 suffered from IVDP and applicant No.2 suffered from spondylitis and were not in position to travel. He would further submit that subsequently COVID pandemic affected the country and therefore considering the advanced age of the applicants, no steps were taken to meet their advocate or to file appeal. He would further submit that it is only when the objection was raised before the Charity Commissioner that applicants have not challenged the judgment and therefore stay which was operating would be operating only *qua* the appellants who had challenged the impugned order, that the applicants realized that the applicants had to challenge the said judgment independently.

5. The reasons which are stated in the application constitute sufficient explanation for the delay particularly considering that the other respondent-trustees had already filed appeal challenging the impugned judgment and order dated 17th October 2018 and therefore

the applicants being under *bona fide* belief that as the impugned order has already been challenged, there is no requirement of filing separate appeal is plausible explanation. As such delay of 4 years and 10 months caused in filing the appeal deserves to be condoned.

6. Interim Application stands allowed.

[Sharmila U. Deshmukh, J.]