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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CIVIL APPELLATE JURISDICTION  
CIVIL APPLICATION NO. 435 OF 2019  
WITH  
INTERIM APPLICATION NO. 6478 OF 2024  
WITH  
CIVIL APPLICATION NO. 436 OF 2019  
IN  
SECOND APPEAL(ST) NO. 6992 OF 2019**

Kisan Laxman Ghumare since deceased ... Applicants/Appellants  
through Lrs and Ors

vs.

Shrikrishna Sahakari Gruha Rachana ... Respondent  
Sanstha Maryadit

Mr. Shailendra S. Kanetkar for Applicants/Appellants.

Mr. R.B. Huded and Mr. M.V. Chavan for Respondent

**CORAM : GAURI GODSE, J.**

**DATED : 11<sup>th</sup> DECEMBER 2024**

**ORDER:**

**CIVIL APPLICATION NO. 435 OF 2019.**

1. I had already heard the application. The application was adjourned for passing order to enable the learned counsel for the applicants to take instructions whether the applicants would want the longer time to vacate by not pressing for the application. On the

last occasion, learned counsel for the applicants was unwell and hence, at his request the application was kept today. Learned counsel for the applicants submit that he has instructions to argue the application on merits.

2. This application is for condonation of delay of 2 years and 55 days in filing the second appeal. The second appeal is preferred against the concurrent judgments and decrees directing the applicants to remove the structure constructed on the property owned by the plaintiff and hand over possession of the suit property to the plaintiff.

3. Learned counsel for the applicants submitted that the reasons mentioned in the application are with regard to insufficient funds for making payment towards the court fees as per the value of the land. The applicants have also raised the ground that one of the applicants is around 80 years old and has no means of income. All the particulars regarding income source of applicant nos. 2, 4 and 5 are stated that due to limited sources of income they are unable to arrange for the funds. It is further contended that applicant no.3, does not have a permanent job and thus, he was unable to make any arrangements. The impugned decree is dated 28<sup>th</sup> September 2016. The application states that the applicants received notice in

December 2018 and thereafter they contacted their advocate for taking steps.

4. Learned counsel for the respondent vehemently opposes the condonation of delay. He submits that in the affidavit-in-reply filed on behalf of the respondent all the particulars regarding the source of income of the applicants and the particulars of their assets are mentioned in the affidavit-in-reply. The particulars given in the affidavit-in-reply regarding applicants' source of income and assets owned by them is not controverted by filing rejoinder affidavit.

5. Learned counsel for the respondent, therefore, submits that false reasons are given in the application for condonation of delay only with an intention to prolong the execution of the decree for possession. Learned counsel for the respondent further submits that the suit plot is owned by the respondent society and thus, due to the pendency of this application, the society is facing difficulties in executing the impugned decree. He therefore prays for dismissal of the application for condonation of delay.

6. I have perused the application and the reply as well as the papers of the second appeal. The applicants were represented before the appeal court. It is not their case that they were unaware about passing of the impugned decree. The reasons stated in

paragraph 5 vaguely mentions receipt of notice in December 2018. The application is bereft of any application regarding the steps taken by the applicants to file the second appeal within the period of limitation.

7. In view of the particulars given in the affidavit-in-reply, the ground of insufficient funds raised in the application cannot be believed. The impugned decree is dated 28<sup>th</sup> September 2016. Except, for contending that the applicants received notice in December 2018, no further particulars or any explanation is mentioned in the application regarding any steps taken by the applicants for challenging the impugned decree. It is not the applicants' case that they were unaware about the impugned decree. Hence, for want of any sufficient grounds, the delay of 2 years and 55 days cannot be condoned on vague reasons stated in the application and in the absence of any steps taken by the applicants to find out the status of their appeal.

8. For the aforesaid reasons, the application is dismissed. In view of dismissal of the application, the second appeal and other pending applications also stand dismissed.

**(GAURI GODSE, J.)**