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82 CA 5200 OF 2025

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

82 CIVIL APPLICATION NO. 5200 OF 2025
IN AOST/11780/2025
WITH
CIVIL APPLICATION NO. 5201 OF 2025
IN AOST/11780/2025

BALKRUSHNA SHANKAR CHAVAN AND SUMAN BALKRUSHNA CHAVAN
DEID THROU LRS DNYANESHWAR BALKRUSHAN CHAVAN AND OTHERS

VERSUS

LILABAI KISAN KHANDAGALE

...

Mr. V. S. Badakh, Advocate for Applicant

Ms. Rakshanda Jaiswal a/w. Mr. K. A. Kale, Advocate for Respondent

...

CORAM : SHAILESH P. BRAHME, J.

DATE : 09.12.2025

PER COURT :-

. Heard both sides.

2. Applicants seek to condone the delay of 517 days in preferring the appeal from order. It is contended by the applicants that due to unavoidable circumstances and the death of some family members, the delay has been caused. It is contended that first Balkrushna died, followed by Shrikant, and Sangita also passed away. Balkrushna and Shrikant were looking after the litigation. The delay is not intentional. It is desirable to condone the delay. It is

candidly submitted that applicants shall cooperate if their Regular Civil Appeal No.61 of 2016 is restored and directed to be decided within stipulated period.

3. Learned counsel for the respondent would submit that respondent-plaintiff is more than seventy years old. She is armed with decree of specific performance of contract and possession passed on 24.01.2013 in RCS No.171 of 2012. It is submitted that all the grounds are false and the applicants are availing other proceedings. It is further stated that applicants are guilty of lapses and very casually prosecuting the matters. There was a delay of 365 days in seeking restoration of the appeal, which was dismissed for default.

4. Learned counsel for the applicants submits that oblique motive of the applicants is apparent as they are in possession of the suit property and dodging the execution.

5. I have considered rival submissions of the parties. The factum of death in the family of the applicants cannot be denied. The lapses on the part of the applicants are apparent. I am constrained to observe this because there was delay of near about three years in preferring the Regular Civil Appeal No.61 of 2016. Thereafter, appeal was dismissed for default on 11.08.2023 and application for restoration was filed belatedly by 365 days. Now, for

preferring the appeal from order, there is delay of 517 days. At the same time, this Court cannot be oblivious on the fact of specific rights of the property in the immovable properties are involved.

6. Learned counsel for the applicants has undertaken that his clients would cooperate the lower Appellate Court if the appeal is directed to be decided on merits. Learned counsel for the respondent is right in contending that his client is also above seventy years old and waiting for the fruits of the decree. She is aspiring possession since 2012.

7. Considering overall circumstances, ends of justice would be met by adjusting the equities by imposing cost of Rs.20,000/- on the applicants by condoning the delay.

8. Civil Application is allowed. The delay stands condoned subject to payment of cost of Rs.20,000/- within two (2) weeks.

9. List the Appeal from Order on 23.12.2025.

(SHAILESH P. BRAHME, J.)