



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

CIVIL REVISION APPLICATION NO. 119 OF 2024

1. Rajendra s/o Chandrakant Mohite
 2. Sakharbai Chandrakant Mohite
 3. Mansing Rambhau Mohite
 4. Sanjay Mansing Mohite
 5. Sunil Mansing Mohite
 6. Baysabai Mansing Mohite
 7. Chaya Uttam Mohite
 8. Jayashri Ambadas Gangarde
- ...Applicants

VERSUS

1. Bhaskar Bhanudas Unde
 2. Mahadev Bhanudas Unde
 3. Gorakh Bhanudas Unde
 4. Dipak Bhanudas Unde
 5. Housrao Bhanudas Unde
 - 5-A. Sangita Housrao Unde
 - 5-B. Akshay Housrao Unde
 - 5-C. Sushant Housrao Unde
 6. Hirabai Maruti Dharkar
 7. Suman Dattatray Palsakar
 8. Kamal Appasaheb Palsakar
 9. Sunita Balasaheb Wagaskar
- ...Respondents

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Advocate for Applicants : Mr. Tambe Rahul A.
Advocate for Respondent Nos. R/1 TO 4, 5A TO 5C, 6 TO 9 :
Mr. Gangakhedkar Shailendra S

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CORAM : SHAILESH P. BRAHME, J.

DATE : 10th JUNE 2025

ORAL JUDGMENT :

1. Heard both the sides.

2. This Revision Application is directed against order dated 05.10.2021 passed by the learned District Judge-2, Shrigonda in Civil Miscellaneous Application No.28/2020, condoning delay of 1047 days in preferring regular Appeal under Order 41 of the Code of Civil Procedure. Applicants are original defendants in a suit filed for injunction by the Respondents. They had also filed counterclaim for injunction.

3. Respondents had filed RCS No.257/2011 for perpetual injunction. It was dismissed for default on 28.11.2016. Applicants had preferred counterclaim for injunction which was continued even after dismissal of the suit. By judgment and decree dated 13.10.2017, counterclaim was allowed, granting perpetual injunction against the Respondents. Respondents had preferred RCS No.86/2020 on 17.03.2020 which was subsequently withdrawn on 25.09.2020. Thereafter they filed appeal under Order 41 of C.P.C., challenging decree passed in counterclaim alongwith the application for condonation of delay bearing Civil M.A. No.28/2020. It was contested by the Applicants. By impugned order, Appellate Court condoned the delay by imposing cost.

4. Learned Counsel Mr. Rahul Tambe appearing for the Applicants submits that there is huge delay of 1047 days and no proper explanation was given. It is submitted that there was no due diligence and bonafide on part of the Respondents in preferring appeal belatedly. The Respondents are not entitled to any benefit of

Section 14 of the Limitation Act. They should have filed appeal instead of RCS No.86/2020. Learned Counsel would further submit that its a error of jurisdiction on part of lower Appellate Court in overlooking the provision of Section 5 of the Limitation Act. No reasons are assigned by learned Judge in that regard. It is further contended that all aspects of the matter have not been dealt with in the impugned order.

5. Per contra, learned Counsel Mr. S. G. Gangakhedkar appearing for the Respondents would submit that there is no perversity or patent illegality or error of jurisdiction in the impugned order. Substantive right of the Respondents are at stake and pragmatic approach has been taken. It is further submitted that under bonafide impression, RCS No.86/2020 was filed which was withdrawn subsequently. He would further submit that learned Judge has taken into account Section 5 as well as Section 14 of the Limitation Act. It is vehemently contended that his clients were not apprised of the order dated 28.11.2016 as well as judgment and decree dated 13.10.2017 passed in the counterclaim. Additionally, he would submit that due to lock-down from 22.03.2020 to 21.03.2022, the Respondents are entitled to receive the benefit which minimizes the period of delay.

6. Respondents tender on record copies of following judgments :

- (a) Sridevi Datla Vs. Union of India and Others
(2021) 5 SCC 321

- (b) Esha Bhattacharjee Vs. Managing Committee of Raghunathpur Nafar Academy and Others
(2013) 2 SCC 649
- (c) Varco Buildcon Through its Partner Vikramsing Arjunsinh Dalwala and Anr Vs. Laxmibai Parlhadrao Nand and Others
Appeal from Order (Stamp) No.18672/2024

7. I have considered rival submissions of the parties. The suit filed by the Respondents for injunction was dismissed on 28.11.2016, but counterclaim for injunction continued. Applicants' counterclaim was allowed on merits on 13.10.2017. Respondents filed RCS No.86/2020 on 17.03.2020 and it was withdrawn on 25.09.2020. Civil Appeal against decree passed in counterclaim was filed on 07.09.2020 alongwith application for condonation of delay. A part of period of delay falls in lock-down i.e. from 22.03.2020 to 21.03.2022. This ground was not specifically taken in the application for condonation of delay, but judicial notice can be taken. Though the delay of 1047 days was sought to be condoned, the period covered by lock-down needs to be excluded. Than would minimize total period of delay.

8. Pertinently, appeal preferred by the Respondents is against decree passed in counterclaim, on merits. In the present matter, suit of the Respondents was dismissed and thereafter counterclaim was decreed. A copy of plaint of RCS No.86/2020 is placed on record which shows that decree passed on 13.10.2017 in RCS No.527/2011

was challenged and the injunction was also prayed for. Near about six months period was consumed in prosecuting the suit. No malafides can be attributed to the Respondents. The reasons assigned by the learned Judge in that regard cannot be faulted.

9. It is not a case of the Applicants that the Respondents have been benefited by prosecuting wrong remedy and thereafter approaching Appellate Court belatedly. Respondents are already facing decree of injunction. In that view of the matter, lower Appellate Court has rightly applied mind and passed reasonable and plausible order.

10. Perusal of the impugned order discloses that benefit of Section 14 of the Act was given to the Respondents. It reveals that the purport of Section 5 of the Act was kept in mind and considered in the order. The submission of learned Counsel Mr. Tambe cannot be countenanced that Section 5 of the Act was totally overlooked. In the application for condonation of delay, specific grounds were raised for the explanation under Section 5 and those were considered by the lower Appellate Court in the impugned order. I do not find that there is any error of jurisdiction or patent illegality in the impugned order.

11. By impugned order, delay was condoned by imposing cost of Rs.2000/-. The substantive right of the Respondents are at stay and therefore they have preferred appeal challenging decree passed on 13.10.2017. Taking pragmatic view of the matter, it would be

desirable to examine the matter on merits, instead of rejecting the matter at the threshold of the technicalities.

12. Reliance is placed by the Respondents on the judgment of Sridevi Datla (supra). I have gone through the Paragraph Nos. 23 to 28 of the judgment. Principles laid down by the Supreme Court are applicable to the case in hand. I have already endorsed that there are bonafides on part of the Respondents and no prejudice would be caused to the Applicants. I have also considered judgment in the matter of Esha Bhattacharjee (supra). Principles laid down in Paragraph Nos. 8 to 12 support the Respondents. There is no reason to defer from the view taken by the coordinate bench in the matter of Varco Buildcon Through its Partner Vikramsing Arjunsinh Dalwala and Anr (supra).

13. For the reasons assigned above, I do not find that any case is made out to cause interference in the impugned order. Civil Revision Application is rejected. There shall be no order as to cost.

14. After pronouncement of the judgment, learned Counsel for the Applicants prays for continuation of the ad-interim relief granted on 28.10.2021, staying the operation and execution of order dated 05.10.2021. It reveals from record that initially Writ Petition No.12112/2021 was filed, challenging the impugned order which was later on converted into Revision Application. Due to the stay obtaining at the relevant time, appeal of the Respondents has not

been registered. Considering the time consumed after 05.10.2021, I am not inclined to accept the request made by the Applicants. Request for continuation of the interim relief is rejected.

SHAILESH P BRAHME
JUDGE

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