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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
SECOND APPEAL NO. 288 OF 2016
WITH
CIVIL APPLICATION NO. 546 OF 2016**

Suresh Chavgonda Patil (Deceased thr. ... Appellants/Applicants
Lrs) and Ors

vs.

M/s. P.B. Khadilkar, Miraj (through ... Respondents
Prop. Pravin Prabhakar Khadilkar) and
Ors

Mr. Sumedh Modak i/b. Mr. Vijay Killedar for Appellants.

Mr. Akshay A. Kulkarni i/b. Mr. A.M. Kulkarni for Respondent No.1.

CORAM : GAURI GODSE, J.

DATED : 28th APRIL 2025

ORDER:

1. Heard learned counsel for the appellants. This appeal is preferred by the heirs and legal representatives of deceased defendant nos.1a and 1b who are also original defendant nos. 3 and 4. The appeal challenges the rejection of the application filed by the appellants for condonation of delay of more than five years in filing the first appeal challenging the trial court's decree. The trial court decreed the suit and directed the defendants to pay an amount of Rs. 1,72,727/- with interest. The trial court's decree is dated 26th

March 2009. The appeal was filed in the district court alongwith the application for condonation of delay on 9th October 2014. The said application is rejected, hence, this second appeal.

2. Learned counsel for the appellants submits that defendant no.2 was not residing at the given address and he had never received suit summons. He submits that the deceased defendant no.1 was karta of the joint family and he was looking after the affairs of the family. He submits that defendant nos. 3 and 4 are sons of defendant no.1. He submits that the deceased defendant no.1 had engaged advocate and filed Vakalatnama on his behalf. However, no steps were taken for filing a written statement and contesting the suit.

3. Learned counsel for the appellants relies upon the relevant averment in the application for delay condonation. He submits that the heirs and legal representatives of defendant no.2, learnt about the trial court's decree on 14th March 2013, when the notice of execution was served upon them. He submits that thereafter, they contacted the advocate and have taken steps to supply all the documents for filing appeal. He submits that after taking appropriate steps, the appeal was filed alongwith the condonation delay on 9th October 2014. He submits that all the particulars are pleaded by the

appellants in the application for condonation of delay. He submits that appellant no. 1a examined himself in support of the contentions in the application. He submits that the first appellate court failed to properly consider the supporting evidence led by the appellants and erroneously dismissed the application on the ground that the allegations against the advocate were not supported by any evidence.

4. Learned counsel for the appellant submits that the particulars of the reasons stated for condonation of delay are not properly appreciated by the first appellate court. He submits that the application for condonation of delay is rejected on technical grounds by ignoring that the appellants' substantial rights would be affected if the delay was not condoned. To support his submissions, learned counsel for the appellants relies upon the decision of this court in the case of *Arvind Yeshwant Kulkarni and another V/s Vinay Madhukar Kulkarni and Others*¹. He submits that this court held that judicial notice can be taken of the facts that normally the suit requires a long time to reach for a hearing and hence, once the advocate is engaged, it is the bounden duty of the advocate to perform duty as an advocate. He therefore submits that this court held that if it is proved that the advocate failed to perform the duties,

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the absence of the party who had engaged advocate should be taken into consideration for delay condonation.

5. Learned counsel for the appellants submits that even in the present case, defendant no.1 had engaged advocate. However, his advocate failed to take any steps for filing written statement and contest the suit. Learned counsel for the appellants thus, submits that the appellants being heirs and legal representatives of the deceased defendant no.1, were unable to contest the suit as the advocate engaged failed to file written statement. Learned counsel for the appellants thus, submits that the aforesaid argument on behalf of the appellants would raise substantial questions of law by applying legal principles settled by this court in the case of *Arvind Kulkarni*.

6. I have perused the papers of the second appeal. There is no dispute that the summons were served upon defendant nos. 3 and 4 who are the legal representatives of deceased defendant no.1. Defendant nos. 3 and 4 though served did not take any steps to engage advocate or contest the suit. So far as engaging advocate by defendant no.1 is concerned, a vague allegation is made against the advocate that no steps were taken for contesting the suit. Nothing was placed on record to indicate any negligence on the part

of the advocate engaged by deceased defendant no.1.

7. Considering the facts and circumstances of the present case, the first appellate court disbelieved the ground of condonation of delay as a sufficient ground to condone the delay of more than five years.

8. The allegations against the advocate who was engaged by deceased defendant no.1 is considered by the first appellate court. After the appearance was filed on behalf of defendant no.1, the application was filed for time to file written statement which was allowed subject to the payment of cost. However, no cost was paid and no written statement was filed. Considering the dates and order recorded in the roznama, the first appellate court refused to accept the allegations made against the advocate as a ground for condonation of delay. The steps taken by the advocate regarding the time for filing the written statement and non payment of the cost and non filing of the written statement is nowhere explained by the appellants. Thus, in the absence of any material on record to substantiate the allegations raised against the advocate, the first appellate court has rightly disbelieved the same as a sufficient ground for condonation of delay. The illness of deceased defendant no.1 was also not supported by any material which would indicate

that illness prevented the appellants from taking any steps after the trial court's decree was passed or atleast after the appellants learnt about the trial court's decree on 14th March 2013.

9. I have perused the reasons stated in the application for condonation of delay. The application is bereft of any explanation about the steps taken by the appellants after the date of knowledge till the filing of the application on 9th October 2014. The first appellate court has examined the rival contentions and evidence brought on record. I do not find any illegality or perversity in the reasons recorded by the first appellate court. For want of any sufficient cause for condonation of delay, the application is correctly dismissed by the first appellate court. The legal principles settled by this court in the case of *Arvind Kulkarni* would not be of any assistance to the appellants, in view of different facts in the present case as referred to above.

10. The second appeal does not raise any substantial question of law. Hence, the second appeal is dismissed.

11. In view of dismissal of the second appeal, the pending application is disposed of as infructuous.

(GAURI GODSE, J.)