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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
INTERIM APPLICATION NO. 18282 OF 2023
WITH
INTERIM APPLICATION NO. 18282 OF 2023
WITH
INTERIM APPLICATION (ST) NO. 34732 OF 2023
IN
APPEAL FROM ORDER (ST) NO. 34730 OF 2023**

V.N. Gaikwad (Dead) through Lrs
Mathabai N. Gaikwad through Lrs Lilabai ...Applicants/ Appellants
V. Gaikwad and Ors

vs.

Ramdas Vishnu Gaikwad and Ors ... Respondents

Mr. Rajaram V. Bansode a/w. Ms. Sheetal M. Ubale and Mr. Mohan
Chavan for Applicants/Appellants.

Mr. Sharad Bhosale i/b. Mr. Dilip Bodake for Respondents.

CORAM : GAURI GODSE, J.

DATED : 18th MARCH 2025

ORDER:

1. This appeal is taken up for final disposal. Heard learned
counsels for the parties.

2. This appeal is preferred by the original defendants. The suit
for partition and separate possession was decreed on 22nd

December 2006. The present appellants filed the first appeal before the district court which was dismissed in default on 16th July 2012. Hence, the appellants preferred an application for restoration which was allowed on 20th June 2016, subject to payment of a cost of Rs. 5000/- each to the original plaintiffs and Rs. 5000/- to the State Government. The appellants were granted time to deposit costs upto 12th June 2016. However, the appellants failed to make payment of the cost. Hence, the applications for condonation of delay and restoration of appeal stood dismissed. The dismissal was recorded on 6th September 2016.

3. The appellants thereafter, filed Miscellaneous Civil Application No. 27 of 2019, for condonation of delay in making payment towards the cost. The said application is rejected on 23rd February 2022. Thus, in view of dismissal of the application, the first appeal preferred by the appellants stands dismissed.

4. Learned counsel for the appellants submits that one of the objections raised on behalf of the plaintiffs is regarding the expenditure incurred by the plaintiffs for applying for measurements for execution of partition decree. Learned counsel for the appellants submits that the reasons for non payment of the cost were explained in the application. However, he submits that to

compensate the plaintiffs for the cost incurred by them and the delay in filing the application, the appellants are ready and willing to pay additional cost of Rs. 50,000/- to the plaintiff i.e. respondent nos. 1 and 2. He submits that the cost shall be paid within four weeks from today. In view of the aforesaid, I see no reason for not extending the time to pay the cost and restore the first appeal.

5. The appellants are therefore permitted to pay the cost of Rs. 25,000/- each to respondent nos. 1 and 2 within four weeks from today.

6. It is clarified that the said amount of cost be paid in addition to the payment of cost already directed by order dated 20th June 2016. The said cost shall also be paid within four weeks from today.

7. The appellants are thus, permitted to pay cost directly to respondent nos. 1 and 2 as recorded above. The payment of the cost of Rs. 5000/- each as directed by order dated 20th June 2016 shall also be directly paid to respondent nos. 1 and 2. However, payment of cost of Rs. 5000/- to the State Government shall be deposited before the District Court.

8. The appellants shall produce the payment receipts before the district court. On producing receipt of payment of cost as permitted above, the Miscellaneous Civil Application No. 27 of 2019, shall

stand allowed and Regular Civil Appeal No. 525 of 2010, shall stand restored to the file of the concerned District Judge at Vaduj, district Satara.

9. The appeal is allowed in aforesaid terms. In view of disposal of the appeal, the interim application is disposed of as infructuous.

10. After the appeal is restored, the appellants are at liberty to file the application for stay or any other interim relief. If the said application is filed, the same to be decided on its own merits.

11. Since, the decree impugned in the first appeal is for partition and separate possession, there will be stay to the actual handing over of physical possession as per the impugned decree.

12. It is clarified that the proceedings for division of property shall proceed.

(GAURI GODSE, J.)