

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
SECOND APPEAL NO.355 OF 2025

Shevanti Kalu Gund	...Appellant
<i>Versus</i>	
Kisan Marhya Ravate	...Respondent

Mr. Gautam Jasraj Jain, Advocate for Appellant.
None for the Respondent

CORAM: MADHAV J. JAMDAR, J.
DATED : 4th September 2025

JUDGMENT:

1. A learned Single Judge, by Order dated 16th June 2025 has framed following substantial question of law :

"1. Whether the Lower Appellate Court was justified in rejecting the delay condonation Application of the Appellants, who claim to be Adivasi and contend that they were not given notice of the hearing; especially when their Advocate remained absent and the Lower Appellate Court has proceeded to hold that everywhere in the country, including in the villages and cities, people are using mobile phones, therefore the Appellants could have checked the status of the legal proceedings from any place?"

2. By the said Order dated 16th June 2025 the learned Single Judge has issued notice for final disposal.

3. Mr. Jain, learned Counsel appearing for the Appellant states that the Respondent has been served, however, none appears for the Respondents.

4. In the Second Appeal, the challenge is to the legality and validity of the Order dated 21st March 2025 passed by the learned District Judge-21, Bhiwandi below Exhibit-1 in Civil Miscellaneous Application No. 18 of 2024.

5. By the impugned Order, the said Miscellaneous Application has been rejected. The said Misc. Application has been filed seeking condonation of delay of about 9 months in filing the Appeal against the Judgment and Decree dated 30th June 2023 passed by the learned Civil Judge, Junior Division, Jawhar in Regular Civil Suit No. 9 of 2017.

6. As already noted there is delay of 9 months in filing the Appeal before the learned First Appellate Court by the said impugned Judgment dated 21st March 2025. The said delay condonation application has been rejected by the learned First Appellate Court. It is the contention of the learned Counsel for the Appellant that the Appellants are illiterate Adivasi ladies and they have no knowledge about the limitation of filing the Appeal and the delay is not deliberate or intentional.

7. The learned First Appellate Court while rejecting delay condonation application has observed that the proceedings of the Court regarding dates, Orders are made online and in India in the villages and in the cities, the people are using mobile phones and they can check their status of proceeding at any time from any place. The Applicants had not contacted their Advocate and they remained absent in the proceeding without any valid reason. It has been further observed that the Appellants have not produced any documents regarding their health and therefore, sufficient reasons are not given for delay condonation.

8. In view of above reasoning of the learned First Appellate Court, the learned Single Judge has framed above substantial question of law.

9. Perusal of record shows that the impugned Judgment and Decree of the learned Trial Court is dated 30th June 2023, the Appellants sought certified copy of the same on 1st January 2024 on urgent basis and received the same on 1st January 2024. Miscellaneous Application seeking condonation of delay along with Appeal was filed on 6th May 2024. While explaining the delay of 9 months in filing the Appeal, the Appellants have given following reasons :

“F. Applicants-defendants state that the delay is caused because of bona fide mistake of date as they were unaware about the dates of the matter and also, they were sick and not well. They were not aware about dates and stage of the matter. They are illiterate Adivasi ladies. They have no legal knowledge. They were not intimated by their advocate about the dates and stage of the matter. It is seen from the record that when the matter was called on for cross-examination of the opponent-plaintiff, the advocate for the applicants-defendants had submitted to the court that he is not in contact with the applicants-defendants, but he had not issued any notice to the applicants-defendants at any point of time. Also, the trial court had not issued any notices to the applicants-defendants on its own motion. In such circumstances, the applicants- defendants were not aware about the dates and stage of the matter and they had bona fide mistake of dates.

G. That the applicants-defendants got the knowledge about the judgment and decree been passed in the said matter on and around 30/12/2024 when the people in the vicinity talked to them about rumors of some kind of judgment being passed against them; and thereupon they enquired about the matter with their advocate. Thereupon they obtained the certified copies of judgment and decree of the matter on 01/01/2024 on urgent basis and asked their advocate to prefer appeal against the same. However, their advocate told them to approach a suitable advocate of Bhiwandi as the appeal is required to be filed at Bhiwandi. Thereafter they approached the advocate on record at Bhiwandi to file the appeal. The said advocate after taking some time for perusing the matter asked them to obtain some more documents of the matter. Thereafter they again obtained the certified copies of related documents of the suit from court on 29/02/2024 and also some revenue record relating to the matter. Thereafter, certain period is lapsed in between due to illness of the applicants-defendants,

due to inconvenience to travel to long distance from Jawhar to Bhiwandi and due to miscommunication with advocate on record After all the said troubles, the applicants-defendants are now filing this appeal before this Hon'ble Court.”

(Emphasis added)

10. Thus, the Appellants have stated that they could not remain present before the learned Trial Court as they were not aware about the dates. They are illiterate Adivasi ladies, they have no legal knowledge and they were not intimated by their Advocate about the dates and and stage of the matter.

11. It has been further stated that when the matter was called out for cross-examination of the Plaintiff, the Advocate for the Appellants i.e. the Defendants submitted to the Court that he is not in contact with the Defendants, however, it is contended that the said Advocate has not communicated anything to the Defendant and no letter has been sent to the Defendants. Explanation is given for the period of 1st January 2024 to 6th May 2024.

12. Thus, it is very clear that the learned First Appellate Court has without considering detailed reasons given by the Appellants seeking delay condonation of about 9 months has dismissed the delay condonation application. There is nothing on record to indicate that the delay is deliberate and/or for malafide reason. By

the impugned Judgment and Decree of the learned Trial Court, the Plaintiffs i.e. the Respondents in the present Second Appeal, have been declared as owners of the suit property and injunction has been granted. Thus, no benefit has been derived by the Appellants, in filing the Appeal, challenging the Judgment and Decree passed by the learned Trial Court after a period of 9 months.

13. Although the sole Respondent has been served, none appears for the Respondent. The material on record shows that there is substance in the substantial question of law framed by the learned Single Judge by Order dated 16th June 2025. Perusal of the impugned order and the detailed reasons given for the delay condonation in the Civil Miscellaneous Application clearly shows that the detailed reasons given by the Appellants are not considered by the learned First Appellate Court and therefore, the impugned order is perverse. As sufficient reasons are given for the delay condonation and there is nothing on record to indicate that the delay is deliberate or for malafide reason and the fact that the Appellants are illiterate Adivasi ladies, case is made out for condonation of delay of about 9 months in filing the Appeal before the learned First Appellate Court.

14. Accordingly, the impugned Judgment and Order dated 21st March 2025 passed by the learned District Judge-2, Bhiwandi in Civil Miscellaneous Application No. 18 of 2024 is quashed and set aside and said Miscellaneous Application 18 of 2024 is allowed in terms of prayer clause (i). As the delay is condoned, the Appeal filed before the learned First Appellate Court be registered.

15. The Appellants are at liberty to file stay application in the said Appeal, which is now directed to be registered before the learned First Appellate Court.

16. It is clarified that this Court has not considered the merits involved in the said Appeal and all contentions on merits of said Appeal filed before the learned District Judge are expressly kept open.

17. The Second Appeal is disposed in above terms, with no order as to costs.

BHALCHANDRA
GOPAL DUSANE

(MADHAV J. JAMDAR, J.)

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