

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

SECOND APPEAL (STAMP) NO.155 OF 2025

Union of India & Ors.

....Appellants

V/S

Noor Mohd. Shaikh @ Noor Mohd.

Ibrahim Shaikh (deceased)

Sultana Noor Mohd. Shaikh & Ors.

....Respondents

**WITH
INTERIM APPLICATION NO.367 OF 2025
(For Stay)
IN
SECOND APPEAL (STAMP) NO.155 OF 2025**

Union of India & Ors.

....Applicants

IN THE MATTER BETWEEN

Union of India & Ors.

....Appellants

V/S

Noor Mohd. Shaikh @ Noor Mohd.

Ibrahim Shaikh (deceased)

Sultana Noor Mohd. Shaikh & Ors.

....Respondents

Mr. Rajendraprasad P. Ojha with Mr. Rakesh Dubey *for the Appellants / Applicants-UOI.*

Mr. Rohit Joshi with Ms. Mittali Dhoble *for Respondents.*

**CORAM : SANDEEP V. MARNE, J.
RESERVED ON : 20 MARCH 2025.
PRONOUNCED ON : 25 MARCH 2025.**

J U D G M E N T:

1) This Appeal is filed challenging the judgment and order dated 1 January 2024 passed by District Judge-3, Panvel,

rejecting the application for condonation of delay of 4 years 5 months and 38 days in preferring Appeal against the decree dated 17 January 2019 passed by Civil Judge Senior Division, Panvel, in Special Civil Suit No.473 of 2011.

2) Plaintiffs instituted Special Civil Suit No.473 of 2011 in the Court of Civil Judge Senior Division, Panvel, seeking direction to remove the encroachment in the suit property bearing Survey No.50, Hissa No.3, admeasuring 0.44.4 Hectares plus 0.07.0 Hectares situated at village Gundge, Taluka Karjat, District Raigad. Plaintiffs sought direction for handing over possession of encroached portion of suit property from the Defendants by removing construction, structure and railway line. Plaintiffs also sought permanent injunction from committing encroachment on the suit property by putting any construction, structure or railway line. Plaintiffs also sought damages of Rs. 25,000/- per month for illegal use of 17 gunthas of land of Plaintiffs from the date of filing of the suit. Defendants were served with suit summons on 12 October 2011 and 14 October 2011. Defendants appeared in the Suit on 20 October 2011 through their Advocate, however they failed to file Written Statement. The suit proceeded without Written Statement of Defendants. Trial Court framed issues. Plaintiffs led evidence by examining Plaintiff No.3 at Exhibit-37. Defendants did not lead any evidence. Trial Court proceeded to decree the Suit by judgment and order dated 17 January 2019 in absence of any defence by the Defendants. The

Trial Court directed the Defendants to remove construction of railway line and compound wall and to handover peaceful possession of demarcated land to the Plaintiffs within three months. Plaintiffs were granted liberty to file application for recovery of mesne profits with regard to encroached portion of suit property. Trial Court also issued permanent injunction against Defendants from carrying out any construction or putting of railway line on the suit property.

3) The decree was put in execution by filing Special Darkhast No.118 of 2019. It is only after warrant of possession was issued by the Executing Court that Defendants filed application under Order IX, Rule 13 of the Code of Civil Procedure, 1908 (**the Code**) in September 2022 seeking setting aside of *ex-parte* decree dated 17 January 2019. They also filed application for condonation of delay of 170 days in filing the said application.

4) During pendency of application for setting aside *ex-parte* decree, Defendants apprehended execution of decree in absence of any stay and were accordingly advised to file substantive Appeal challenging the judgment and decree dated 17 January 2019. Accordingly, they instituted Civil Appeal before the District Court on 26 July 2023 alongwith Civil Miscellaneous Application No.67 of 2023 seeking condonation of delay of 4 years, 5 months and 38 days. The District Court granted ad-interim stay to the execution of the decree by order dated 27 July 2023. The application for condonation of delay was resisted by Plaintiffs by

filing Reply. Defendants examined Mr. Prafulla Chilwirwar, Divisional Engineer (Land Management) as PW1. The District Court has however proceeded to reject the application for condonation of delay by judgment and order dated 1 April 2024, which is the subject matter of challenge in the present Appeal.

5) It appears that the Appellants initially filed Writ Petition No.17641 of 2024 challenging the judgment and order passed by the District Court dated 1 April 2024. By order dated 3 December 2024, this Court disposed of Writ Petition by granting liberty to the Appellants to file appropriate proceedings to challenge the order dated 1 April 2024. The interim order granted by this Court on 19 January 2024 was continued for a period of six weeks. The Writ Court further recorded submission of the learned counsel appearing for the Plaintiffs that the application for condonation of delay in filing the Second Appeal would not be opposed. Accordingly, Appellants have filed the present Appeal.

6) The Second Appeal has been admitted on following substantial question of law:

Whether discretion exercised by the First Appellate Court in refusing to condone the delay in filing Appeal is judicious?

7) Mr. Ojha, the learned counsel appearing for Appellants would submit that the delay caused in filing of Appeal before the First Appellate Court was not intentional. That Appellant being

a part of Government of India, various approvals are required to be obtained at hierarchical levels for taking decision relating to filing of proceedings. That Appellants were not aware about passing of *ex-parte* decree dated 17 January 2019 and acquired knowledge about the same only in April 2022. That accordingly correspondence was made with the Ministry of Law and Justice seeking approval for engagement of Panel Advocate. That engagement of Panel Advocate was sanctioned by the Ministry on 27 April 2022 and accordingly the panel advocate was instructed to take necessary steps in respect of the *ex-parte* decree by letter dated 13 May 2022. That since the Advocate was unable to take timely steps, engagement of another Advocate was sought by letter dated 13 September 2022 which was sanctioned by the Ministry of Law and Justice on 21 September 2022. That immediately thereafter application under Order 9 Rule 13 of the Code was filed on 17 November 2022 to seek recall of the *ex-parte* decree. However, since Plaintiffs were proceeding ahead with execution of the decree, the Appellants were advised to file the substantive appeal and thereby seek stay to execution of the decree from the Appellate Court. That therefore substantive Appeal was filed before the District Court on 26 July 2023. That therefore delay from the date of filing of application for setting aside *ex-parte* decree ought to have been condoned. So far as delay upto the date of filing of application for setting aside of *ex-parte* decree is concerned, he would submit that the same is attributable essentially to lack of knowledge on the part of the Appellants about *ex-parte* decree dated 17 January 2019.

8) Mr. Ojha would further submit that the concerned land has been acquired and that therefore the suit filed by the Plaintiffs is clearly baseless. He would rely upon the Award as well as necessary Notifications in support of his contention that three separate portions of land forming part of Survey No.50/3(P) admeasuring 13.5 R, 11.4 R and 11.5 R. has been acquired. He would submit that the Railway Administration has laid railway line on the concerned portion of the suit property and the effect of the impugned decree is that operations of railways would be affected if the decree is permitted to be executed. He would therefore submit that opportunity deserves to be granted to the Appellants to prosecute the appeal on merits by condoning the delay.

9) The appeal is opposed by Mr. Joshi, the learned counsel appearing for Respondents/Plaintiffs. He would submit that the Defendants made a false statement in their appeal memo before the first Appellate Court that they acquired knowledge about *ex-parte* decree in September 2022 which contention is contrary to the letter dated 27 April 2022 of Ministry of Law and Justice. That since the application for condonation of delay is premised on false statements, the Defendants are not entitled to exercise of discretion in their favour. That the delay is inordinate and cannot be condoned in absence of sufficient cause being shown. He would submit that condonation of delay cannot be sought by merely seeking to blame the Advocate. That the Appellate Court has correctly appreciated the conduct of the Defendants in refusing

to condone the delay. He would submit that merely because Defendants are Government, the same cannot be a ground for condonation of delay. Mr. Joshi would further submit that the Defendants have gone ahead with construction on the land even after passing of decree dated 17 January 2019. That such conduct would clearly disentitle them from seeking discretionary and equitable jurisdiction of this Court for condonation of inordinate delay of 4 years, 5 months and 38 days. He would contest the claim of Mr. Ojha about acquisition of three portions of land and would invite my attention to the Award, by which only land admeasuring 13.5 R in Survey No.50, Hissa No.3 is acquired. That no Award has been passed with regard to balance portion of the land. That the suit has been filed by excluding the acquired portion of land of 13.5 R. He would submit that in any case, merits of the case cannot be considered while deciding the issue of condonation of delay.

10) In support of his contentions, Mr. Joshi would rely upon following judgments:

- i)** *Basawaraj and another Versus. Special Land Acquisition Officer*¹
- ii)** *Popat Bahiru Govardhane and others Versus. Special Land Acquisition Officer and another*²
- iii)** *Sanjay Singh and another Versus. Central Himalayan Land Development Company Limited*³
- iv)** *University of Delhi Versus. Union of India and others*⁴

1 (2013) 14 SCC 81

2 (2013) 10 SCC 765

3 (2019) 12 SCC 218

4 (2020) 13 SCC 745

- v) *Neerja Realtors Private Limited Versus. Janglu (Dead) through legal representative*⁵
- vi) *Koushik Mutually Aided Cooperative Housing Society Versus. Ameena Begum and another*⁶

11) I have given my anxious consideration to the submissions canvassed by the learned counsel appearing for rival parties. I have also gone through the findings recorded by the First Appellate Court in the impugned order and relevant documents placed on record along with compilation.

12) In the present case, Appellants exercised twin remedies simultaneously against the *ex parte* decree dated 17 January 2019 simultaneously. They first filed application for setting aside the *ex parte* decree under Order IX Rule 13 of the Code and during pendency of that application, they simultaneously filed substantive appeal against the decree dated 17 January 2019 under Section 96 of the code before the first Appellate Court. This course of action is permissible in law as held by the Apex Court in ***Neerja Realtors (P) Ltd.*** (supra) in which it is held as under:

17. A defendant against whom an *ex parte* decree is passed has two options : the first is to file an appeal. The second is to file an application under Order 9 Rule 13. The defendant can take recourse to both the proceedings simultaneously. The right of appeal is not taken away by filing an application under Order 9 Rule 13. But if the appeal is dismissed as a result of which the *ex parte* decree merges with the order of the appellate court, a petition under Order 9 Rule 13 would not be maintainable. When an application under Order 9 Rule 13 is dismissed, the remedy of the defendant is under Order 43 Rule 1. However,

5 (2018) 2 SCC 649

6 2023 SCC OnLine SC 1662

once such an appeal is dismissed, the same contention cannot be raised in a first appeal under Section 96. The three-Judge Bench decision in Bhanu Kumar Jain has been followed by another Bench of three Judges in Rabindra Singh v. Financial Commr., Cooperation, and by a two-Judge Bench in Mahesh Yadav v. Rajeshwar Singh. In the present case, the original defendant chose a remedy of first appeal under Section 96 and was able to establish before the High Court, adequate grounds for setting aside the judgment and decree.

13) The same view is reiterated in ***Koushik Mutually Aided Cooperative Housing Society*** (supra) in which it is held as under:

13. As against the ex-parte decree, a defendant has three remedies available to him. First, is by way of filing an application under Order IX Rule 13 CPC seeking for setting aside ex-parte decree; the second, is by way of filing an appeal against the ex-parte decree under Section 96(2) of the CPC and the third, is by way of review before the same court against the ex-parte decree.

14. The filing of an application under Order IX Rule 13 CPC as well as the filing of appeal under Section 96(2) of the CPC against the ex-parte decree are concurrent remedies available to a defendant. However, once the appeal preferred by the defendant against the ex-parte decree is dismissed, except when it is withdrawn, the remedy under Order IX Rule 13 CPC cannot be pursued. Conversely, if an application filed under Order IX Rule 13 CPC is rejected, an appeal as against the ex-parte decree can be preferred and continued under Section 96(2) of the CPC. Thus, an appeal against an ex-parte decree even after the dismissal of an application under Order IX Rule 13 CPC is maintainable.

14) Appellants, though exercised simultaneous remedies by filing application under Order IX Rule 13 as well as a substantive appeal under Section 96 of the Code, they ultimately

pressed for decision of the Appeal. The Appellate Court has refused to condone the delay in filing the Appeal, which has necessarily resulted in dismissal of the substantive appeal. The decree of the Trial Court has now merged with the decree of the first Appellate Court, against which the present Second Appeal is preferred. Though the Application for setting aside *ex parte* decree under Order IX Rule 13 of the Code was preferred at an earlier point of time (September 2022) and delay in filing the same was comparatively lesser, Appellants took a chance by pressing the substantive appeal (filed on 26 July 2023) involving longer delay. Having pressed the remedy of substantive appeal, Appellants are now precluded from going back to the remedy of application of setting aside *ex parte* decree under Order IX Rule 13 of the Code.

15) The delay in filing of the Appeal by the Appellants is no doubt inordinate as it runs into 4 years, 5 months and 38 days. The issue for consideration is whether the Appellants had made out a sufficient cause before the First Appellate Court for condonation of delay and whether discretion exercised by the First Appellate Court in refusing to condone the delay is judicious? Appellants are Railway Administration, and it is their case that the suit properties are already acquired on which railway line of Karjat - Neral route is operational. However, it is well settled position of law that merely because a litigant is Government, the same cannot *ipso facto* be a ground for condonation of inordinate delay. Even Government will have to

make out a sufficient cause for condonation of delay in filing of proceedings. Reference in this regard can be made to the following observations of the Hon'ble Supreme Court in ***Union of India vs. Jahangir Byramji Jeejeebhoy***⁷:

25. It hardly matters whether a litigant is a private party or a State or Union of India when it comes to condoning the gross delay of more than 12 years. If the litigant chooses to approach the court long after the lapse of the time prescribed under the relevant provisions of the law, then he cannot turn around and say that no prejudice would be caused to either side by the delay being condoned.
.....

(emphasis added)

16) Therefore, merely because Appellants are Union of India, the same would not *ipso facto* be a reason for condonation of delay in absence of making out a reasonable cause. Ofcourse the Apex Court in ***Esha Bhattacharjee v. Managing Committee of Raghunathpur Nafar Academy***,⁸ has held that the State should be given some acceptable latitude. The Apex Court has summarized the conclusions as under:

“21. From the aforesaid authorities the principles that can broadly be culled out are:

21.1. (i) There should be a liberal, pragmatic, justice-oriented, non-pedantic approach while dealing with an application for condonation of delay, for the courts are not supposed to legalise injustice but are obliged to remove injustice.

21.2. (ii) The terms “sufficient cause” should be understood in their proper spirit, philosophy and purpose regard being had to the

⁷ 2024 SCCOnline 489

⁸ (2013) 12 SCC 649

fact that these terms are basically elastic and are to be applied in proper perspective to the obtaining fact-situation.

21.3. (iii) Substantial justice being paramount and pivotal the technical considerations should not be given undue and uncalled for emphasis.

21.4. (iv) No presumption can be attached to deliberate causation of delay but, gross negligence on the part of the counsel or litigant is to be taken note of.

21.5. (v) Lack of bona fides imputable to a party seeking condonation of delay is a significant and relevant fact.

21.6. (vi) It is to be kept in mind that adherence to strict proof should not affect public justice and cause public mischief because the courts are required to be vigilant so that in the ultimate eventuate there is no real failure of justice.

21.7. (vii) The concept of liberal approach has to encapsulate the conception of reasonableness and it cannot be allowed a totally unfettered free play.

21.8. (viii) There is a distinction between inordinate delay and a delay of short duration or few days, for to the former doctrine of prejudice is attracted whereas to the latter it may not be attracted. That apart, the first one warrants strict approach whereas the second calls for a liberal delineation.

21.9. (ix) The conduct, behaviour and attitude of a party relating to its inaction or negligence are relevant factors to be taken into consideration. It is so as the fundamental principle is that the courts are required to weigh the scale of balance of justice in respect of both parties and the said principle cannot be given a total go by in the name of liberal approach.

21.10. (x) If the explanation offered is concocted or the grounds urged in the application are fanciful, the courts should be vigilant not to expose the other side unnecessarily to face such a litigation.

21.11. (xi) It is to be borne in mind that no one gets away with fraud, misrepresentation or interpolation by taking recourse to the technicalities of law of limitation.

21.12. (xii) The entire gamut of facts are to be carefully scrutinised and the approach should be based on the paradigm of judicial discretion which is founded on objective reasoning and not on individual perception.

21.13. (xiii) **The State or a public body or an entity representing a collective cause should be given some acceptable latitude.**

22. To the aforesaid principles we may add some more guidelines taking note of the present day scenario. They are:

22.1. (a) An application for condonation of delay should be drafted with careful concern and not in a haphazard manner harbouring the notion that the courts are required to condone delay on the bedrock of the principle that adjudication of a lis on merits is seminal to justice dispensation system.

22.2. (b) An application for condonation of delay should not be dealt with in a routine manner on the base of individual philosophy which is basically subjective.

22.3. (c) Though no precise formula can be laid down regard being had to the concept of judicial discretion, yet a conscious effort for achieving consistency and collegiality of the adjudicatory system should be made as that is the ultimate institutional motto.

22.4. (d) The increasing tendency to perceive delay as a non-serious matter and, hence, lackadaisical propensity can be exhibited in a nonchalant manner requires to be curbed, of course, within legal parameters.”

(emphasis added)

17) Turning to the facts of the present case, the decree was passed by the Trial Court on 17 January 2019. The decree was

put in execution and it appears that sometime in April 2022, Defendants received notice in the execution proceedings. There appears to be contradictory statements made by Defendants about date of acquisition of knowledge about decree dated 17 January 2019. In Application filed for condonation of delay for setting aside *ex-parte* decree, Defendants averred that they acquired knowledge of the decree in June 2022 when they received notice of execution proceedings. In their Appeal Memo filed before the District Court, they averred that the knowledge about decree was acquired in September 2022 after receiving warrant of possession. Both the statements appear to be contrary to the letter dated 27 April 2022 by which the Government of India, Ministry of Law and Justice sanctioned engagement of Panel Advocate to represent the Defendants in the District Court. The said appointment was made in pursuance of the letter of Defendants dated 27 April 2022. The Defendants thus acquired knowledge about the decree dated 17 January 2019 atleast on 27 April 2022. Defendants thus made contradictory and incorrect statements in their applications filed before Trial Court as well as before District Court about date of acquisition of knowledge about Trial Court's decree. Such a conduct on the part of the Defendants is clearly deplorable.

18) It thus appears that the Defendants learnt about decree dated 17 January 2019 sometime in April 2022. As a matter of fact, Defendants had engaged an Advocate in the suit, who had appeared on 20 October 2011. Defendants however did not file

Written Statement nor bothered to find out outcome of the suit, which remained pending for 8 long years before the Trial Court. After acquiring knowledge about decree dated 17 January 2019 in April 2022, there appears to be some justification till November 2022, which time was apparently spent by the Defendants in seeking approvals from the Ministry of Law and Justice for engagement of Panel Advocate. It appears that initially a different panel Advocate was approved by the Ministry of Law and Justice on 27 April 2022 and the Defendants made correspondence with the said panel Advocate on 13 May 2022 to take steps in respect of the Trial Court's decree. It however appears that the said Advocate did not take any steps and therefore engagement of another Advocate was sought by letter dated 13 September 2022 and the Ministry of Law and Justice approved engagement of another Advocate on 21 September 2022. This is how the application for setting aside *ex-parte* decree was apparently filed by the Defendants in the Trial Court on 17 November 2022. In my view therefore, there is sufficient justification in respect of the period from April 2022 till November 2022.

19) In respect of the period from 17 November 2022 (day of filing of application under Order 9 Rule 13 of the Code) and 26 July 2023 (date of filing of Appeal before this Court), the same will have to be condoned as the Defendants were required to take a decision of filing of Appeal on account of necessity of securing stay to the execution of decree. It appears that the application for

setting aside *ex-parte* decree remained pending before the Trial Court from 17 November 2022. However, since execution of the decree was being pressed, the Defendants decided to file a substantive appeal against the decree and sought stay on execution of the Trial Court's decree and this is how the Appeal came to be lodged on 26 July 2023. Appellants succeeded in securing ad-interim stay to the execution of the decree from the Appellate Court on 27 July 2023. Since Appellants had already taken steps *qua* Trial Court's decree in November 2022, there is sufficient justification for condonation of delay from 17 November 2022 to 26 July 2023.

20) This is how the period from April 2022 till 26 July 2023 is covered by sufficient cause shown by the Defendants.

21) So far as the period prior to April 2022 is concerned, the Defendants pleaded in their Application for condonation of delay that though the Advocate was engaged to defend the suit, no information relating to progress of the suit was given to them and that they were not aware about passing of the decree dated 17 January 2019. There is nothing on record to indicate that Defendants had acquired knowledge about passing of the decree prior to April 2022. It appears that they became aware of the *ex-parte* decree only after they received notice in the execution proceedings. No doubt, the Defendants are negligent in not enquiring about progress of the suit after engaging their Advocate and remaining blissfully unaware about progress of the

suit which was decreed on 17 January 2019. This negligent conduct on the part of the Appellants can be taken care of by imposition of exemplary costs on them. However, this Court is mindful of the fact that if there is absence of cause for condonation of delay, it is impermissible to condone the delay by imposing a condition. In ***Basawaraj*** (supra) the Apex Court has held in paragraph 15 of the judgment as under:

15. The law on the issue can be summarised to the effect that where a case has been presented in the court beyond limitation, the applicant has to explain the court as to what was the “sufficient cause” which means an adequate and enough reason which prevented him to approach the court within limitation. In case a party is found to be negligent, or for want of bona fide on his part in the facts and circumstances of the case, or found to have not acted diligently or remained inactive, there cannot be a justified ground to condone the delay. **No court could be justified in condoning such an inordinate delay by imposing any condition whatsoever. The application is to be decided only within the parameters laid down by this Court in regard to the condonation of delay. In case there was no sufficient cause to prevent a litigant to approach the court on time condoning the delay without any justification, putting any condition whatsoever, amounts to passing an order in violation of the statutory provisions and it tantamounts to showing utter disregard to the legislature.**

(emphasis added)

22) However, in the present case, this Court is not condoning the delay from the date of decree till the April 2022 only by imposing the condition of payment of cost. This Court is inclined to condone the said delay by accepting the justification about lack of knowledge on the part of Railway Administration about passing of the exparte decree. Plaintiffs/Respondents have not been able to point out any material to indicate acquisition of

knowledge about passing of *ex parte* decree by the Appellants prior to April 2022. Also of relevance is the fact that COVID 19 pandemic was prevalent from 15 March 2020 to 28 February 2022 and the period of limitation was suspended by various orders passed by the Apex Court. In my view therefore sufficient cause of made out for condonation of delay upto April 2022 as well.

23) Imposition of costs is thus being considered mainly for compensating the Plaintiffs/Respondents for their sufferings due to negligent conduct of the Railway Administration in not keeping tabs on progress of the Suit after engaging an Advocate to defend the same.

24) It is the case of the Appellants that a railway line has already been established on the concerned portion of the suit property. It is the claim of Appellants that they have not committed any encroachment and they have relied upon following documents in support of their claim of acquisition of land admeasuring 36.4 R:

- i) Notification dated 2 May 1980 and award dated October 1981 - 13.5 R.
- ii) Notification dated 5 September 1981 – 11.4 R,
- iii) Notification dated 27 July 1982 – 11.5 R.

25) Mr. Joshi would contest the said claim of acquisition of land admeasuring 36.4 R submitting that there is only one Award in

respect of acquisition of the land admeasuring 13.5 R and that rest of the land has not been acquired. There thus appears to be arguable case with regard to acquisition of alleged encroached portion of the suit property. In my view therefore an opportunity deserves to be granted to the Railway Administration to pursue their appeal on merits. For their negligent conduct resulting in cause of prejudice to the Plaintiffs, who have litigating since the year 2011, costs need to be imposed on the Defendants. The Trial Court has already directed conduct of enquiry into mesne profits. Thus, in the event of Plaintiffs ultimately succeeding before the Appellate Court, they would be in a position to secure mesne profits on account of possession of the suit property by the Defendant-Railway Administration. In that sense, delay in decision of the proceedings would not cause serious prejudice to the Plaintiffs. At this juncture therefore, Defendants/Appellants are required to be saddled with some costs considering their negligent conduct in not keeping track of progress of the suit. The costs are quantified at Rs. 1,00,000/- considering the facts and circumstances of the case.

26) Since this Court is convinced that the Appellants have shown sufficient cause for condonation of delay, it is considered not necessary to discuss the ratio of judgments in ***Popat Bahiru Govardhane, Sanjay Singh and University of Delhi vs. Union of India*** (supra) which are rendered in the facts of those cases.

27) The question of law framed is accordingly answered by holding that the discretion exercised by the first Appellate Court in refusing to condone the delay is not judicious. The first Appellate Court ought to have condoned the delay in filing the Appeal. The impugned judgment and order passed by the first Appellate Court is thus indefensible and liable to be set aside.

28) The Appeal accordingly succeeds, and I proceed to pass the following Order:

- (i) The judgment and order dated 1 January 2024 passed by the District Court in Civil Miscellaneous Application No.67 of 2023 is set aside.
- (ii) Civil Miscellaneous Application No.67 of 2023 is allowed by condoning the delay in filing the Appeal. The Appeal shall be registered and decided on its own merits without being influenced by any of the observations made by this Court in the judgment.
- (iii) The Appellants/Defendants shall pay to the Plaintiffs costs of Rs. 1,00,000/- by way of Demand Draft/Cheque drawn in the name of Sultana Noor Mohd. Shaikh within a period of six weeks. Payment of costs shall be condition precedent for registration and consideration of Appeal on merits.

iv) Considering the fact that the suit was instituted in the year 2011, the Appellate Court shall expedite hearing of the Appeal and make an endeavour to decide the same as expeditiously as possible, preferably within one year.

29) With the above directions, the Appeal is **allowed** with costs as directed above. In view of the disposal of the Second Appeal, nothing would survive in the Interim Application for stay and the same is also **disposed of** accordingly.

(SANDEEP V. MARNE, J.)

Digitally signed
by
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RAJALINGAM
KATKAM
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