IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, NAGPUR.

SECOND APPEAL NO. 92 OF 2024

APPELLANTS :
(Original Defendant)
On R.A.

1. Motiram Bapurao Shinde,
Aged : 63 years,
Occu. Agriculturist,

2. Sudhir Subhashrao Shinde,
Aged : 42 years, Occu. Agriculturist,

3. Nilesh Subhashrao Shinde,
Aged : 40 years, Occu. Agriculturist,

All R/o Takli Rajapur,
Tq. Umarkhed, Dist. Yavatmal.

V E R S U S

RESPONDENTS :
(Original Plaintiffs)
(On R.A.)

1. Gulab Sahebrao Shinde,
Aged about 61 Years,
Occu. Agriculturist,

2. Balaji Sahebrao Shinde,
Aged about 55 years,
Occu. Agriculturist,

3. Godawaribai Sahebrao Shinde,
Aged about 76 Years,
Occu. Agriculturist,

4. Omalbai Ashokrao Mane,
Aged about 63 Years,
Occu. Agriculturist,
R/o Chatari, Tq. Umarkhed,
Dist. Yavatmal.

5. Sangeetabai Ramrao Mane,
Aged about 51 Years,
Occu. Agriculturist,
R/o Chatari, Tq. Umarkhed,
Dist. Yavatmal.

6. Pundalik Dadarao Shinde,
Aged about 47 Years,
Occu. Agriculturist,

7. Bhagirathabai Dadarao Shinde,
Aged about 83 Years,
Occu. Agriculturist,

8. Suvarnamala Madhavrao Gavhane,
Aged about 61 Years,
Occu. Agriculturist,
R/o Nagoli, Tah. Ardhapur,
Dist. Nanded.

9. Rekha Anandrao Mane,
Aged about 56 Years,
Occu. Agriculturist,
R/o Yelamb, Tah. Hadgaon,
Dist. Nanded.

Org. Defendant 2 & 3 on R. A.

10. Amol Prakash Shinde,
Aged about 45 Years,
Occu. Agriculturist,

11. Santosh Prakash Shinde,
Aged about 48 Years,
Occu. Agriculturist,

R.No.1 to 3, 6 to 7 & 10 to 11
R/o. Takli (Rajapur),
Tah. Umarkhed, Dist. Yavatmal.

Shri Amol B. Patil with Shri V. N. Patre, Advocates for appellants.
Shri S. C. Mehadia, Advocate for respondent Nos.1 to 9.

CORAM: ROHIT W. JOSHI, J.
DATED : 16/04/2025.

ORAL JUDGMENT :

1. Heard. Admit. Heard finally with the consent of learned counsel appearing for the parties.

2. The present second appeal is filed by the appellant/original defendants who have suffered a decree of possession dated 20/04/2022 in Regular Civil Suit No.119/2012 passed by the learned Civil Judge,

Junior Division, Umerkhed. They filed an appeal under Section 96 of the Code of Civil Procedure in order to challenge the said decree. However, there was delay of 337 days in filing the first appeal for which an application for condonation of delay came to be filed. The application for condonation of delay is registered as MJC No.31/2023. Vide Judgment and order dated 30/01/2024, the learned District Judge-1, Pusad has rejected the said application. The learned First Appellate Court has held that the appellants have not explained day to day delay and number of days of delay is not mentioned in the application and although the delay is sought to be condoned on the ground of ailment of Appellant No.1, there is no pleading in the application for condonation of delay with respect to ailment and treatment of the Appellant No.1.

3. Shri Amol Patil, learned counsel for the appellants has drawn my attention to the application for condonation of delay and particularly, Paragraph No.2 of the said application. Perusal of the application indicates that the appellants have stated that the Appellant No.1 was looking after the litigation. The Appellant No.1 is paternal uncle of Appellant Nos.2 and 3. It is stated that the appellants were not aware about the Judgment and Decree dated 20/04/2022 passed by the learned Trial Court till 29/04/2023. It is averred that they came to know about the impugned Judgment and decree on 29/04/2023. The appellants have stated that they took immediate steps for obtaining the certified copies which were received only on 06/05/2023 and thereafter, the appeal came to be filed on 20/06/2023 along with application for

condonation of delay. It is also averred that the appellant No.1 was not keeping good health and therefore, he could not keep himself abreast with the development in the matter and was not aware about passing of the impugned Judgment and Decree.

4. Per contra, Shri S.C.Mehadia, learned counsel appearing for the respondent Nos.1 to 9 contends that the delay is not properly explained. He contends that it was necessary for the appellants to explain the day to day delay and that delay cannot be condoned merely for the asking. He states that Medical Certificate produced on record by the appellants is an undated document. He has placed reliance on the Judgment of the Hon'ble Supreme Court in the matters of **Majji Sannemma Alias Sanyasirao Vrs. Reddy Sridevi and others,** reported in **(2021) 18 SCC 384,** and **Union of India and another Vrs. Jahangir Byramji Jeejeebhoy (D) through his LR,** reported in **2024 SCC OnLine SC 489.** In reply, Shri Amol Patil, learned counsel for the appellants drawn my attention to the documents filed on record. He points out that although the Medical Certificate is undated, the medical prescriptions are also placed on record in which the dates are mentioned. He also points out that the prescriptions and Medical Certificates issued by Dr. Mahesh R. Shah, Shah Hospital & Critical Care Center at Yavatmal. He has also drawn my attention to the Pathological investigation reports of the Appellant No.1. He has placed reliance on the Judgments of the Hon'ble Supreme Court in the matters of **1] N. Balakrishnan Vrs. M. Krishnamurthy,** reported in **(1998) 7 SCC 123,** 2] **Mool Chandra Vrs.**

Union of India and another, reported in (2025) 1 SCC 625 and 3] Judgment of this Court dated 25/09/2023 passed in Writ Petition No.8045/2023. The judgments relied upon by rival parties reiterate general principles regulating exercise of discretion under Section 5 of the Limitation Act.

5. Vide order dated 07/04/2025, this Court has framed the following substantial question of law :-

> "Whether the learned First Appellate Court was correct in not considering the reason of delay in filing the first appeal by the appellants ?"

6. I have perused the application and the impugned Judgment and order passed by the learned First Appellate Court. Although, it is stated in the application that the Appellant No.1 who was looking after the litigation was indisposed. The learned First Appellate Court has observed that there is no averment in the application that the appellant No.1 was indisposed. The said observation of the learned Appellate Court regarding absence of pleading of applicant No.1 being indisposed is contrary to the contents of the application. The appellants have pleaded that the appellant No.1 was indisposed. It will also be pertinent to mention that the learned First Appellate Court has not disbelieved the documents filed on record by the appellants to demonstrate that the Appellant No.1 was indeed suffering from some illness. The learned First Appellate Court has however, observed that the said documents were placed on record at the fag end of the proceeding and that too

without any pleading in the application. The application is rejected by not accepting the explanation on this count.

7. Although, delay cannot be condoned merely for the asking and sufficient cause must be made out in order to seek condonation of delay, it is also well settled that while dealing with the application for condonation of delay, the Courts must normally adopt a liberal approach. Normally, explanation offered by the applicants should be accepted, if it appears to be plausible. In the present case, the explanation offered by the applicants appears to be plausible inasmuch as the version about indisposition of the Appellant No.1 is supported by documents on record. It also needs to be mentioned that the medical documents are issued under the signature of a Doctor holding qualification of MBBS and MD (Medicine). These documents are not disbelieved by the learned First Appellate Court. .

8. Apart from this, it appears from the application that the appellants have stated that they were not aware about the Judgment and Decree passed by the learned Trial Court till April, 2023.

9. The observation that day to day delay is not explained demonstrates erroneous approach on the part of the learned First Appellate Court. The learned First Appellate Court has erred in exercising discretion vested under Section 5 of the Limitation Act.

10. Having regard to the totality of the circumstances, I am of the considered opinion that by adopting a liberal approach, delay caused in filing the appeal should be condoned, in the facts of the case. The substantial question of law is accordingly answered in favour of the appellants. The Judgment and order dated 30/01/2024 passed by the learned District Judge-1, Pusad in MJC No.31/2023 is quashed and set aside. The MJC No.31/2023 stands allowed, subject to costs of Rs.5,000/-.

11. The civil applications, pending if any, are disposed of accordingly.

[ROHIT W. JOSHI, J.]

Choulwar