



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

APPEAL FROM ORDER NO. 87 OF 2025

Balkrushna Shankar Chavan
Since deceased through his L.Rs.
Suman Balkrushna Chavan
Since deceased through his L.Rs.

1. Dnyaneshwar Balkrushna Chavan
and others

.. Appellants

Versus

Lilabai Kisan Khandagale

.. Respondent

Shri Vishal S. Badakh, Advocate for the Appellants.

Shri K. A. Kale, Advocate for the Respondent.

CORAM : SHAILESH P. BRAHME, J.

DATE : 27TH JANUARY, 2026.

FINAL ORDER :

. Heard both sides.

2. Appeal is directed against order dated 11.08.2023 refusing to condone the delay of 365 days for setting aside order of dismissal of R.C.A. No. 61 of 2016. Appellants are original defendants who suffered decree of specific performance of contract and perpetual injunction in R.C.S. No. 171 of 2012. The impugned order is passed in R.C.A. No. 61 of 2016 preferred by them which was dismissed for non prosecution on 21.12.2021.

3. The respondent had filed R.C.S. No. 171 of 2012 for specific performance of contract. It was contested by the appellants. The Trial Court decreed the suit on 24.01.2013. There was delay of

almost three years in preferring the appeal. It was condoned by the appellate Court and the appeal was registered. It was dismissed in default on 21.12.2021. Appellants preferred Misc. Civil Application No. 48 of 2022 for condonation of delay of 365 days and for setting aside order of dismissal. By impugned order delay was refused to be condoned considering the conduct of the appellant.

4. Appellant filed present appeal belatedly. This court condoned the delay of 517 days by imposing cost of Rs. 20,000/- vide order dated 09.12.2025. The cost has been deposited, which is yet to be disbursed to the respondent – plaintiff.

5. The lapses on the part of the appellant are apparent, but it cannot be denied that their substantive proprietary rights are involved in the matter. Learned counsel for the appellant has undertaken that his clients will cooperate the lower Appellate Court in early disposal of the R.C.A. No. 61 of 2016. It is ready for final hearing and lower Appellate Court can be directed to decide it expeditiously.

6. Already this Court has imposed cost of Rs. 20,000/- on the appellants while condoning the delay. Appellants have undertaken to cooperate the appellate Court. In that view of the matter interest of justice would be sub served in condoning the delay of 365 days caused in filing application for restoration of regular civil appeal. I, therefore, pass following order.

O R D E R

- A. Appeal from order is allowed.
- B. The order dated 11.08.2023 passed in Misc. Civil Application No. 48 of 2022 is quashed and set aside and the delay stands condoned.
- C. Order of dismissal dated 21.12.2021 passed in R.C.A. No. 61 of 2016 is also quashed and set aside and appeal shall stand restored to its original position.
- D. Both parties shall cooperate the lower appellate Court for early disposal of appeal.
- E. The lower Appellate Court shall decide the appeal as expeditiously as possible and preferably within a period of eight (08) months from today, on its own merits.
- F. Any further lapses on the part of the appellants in taking steps for early disposal of appeal would be taken very seriously and would amount to breach of undertaking given to this Court.
- G. The amount of cost deposited in this Court shall be disbursed to the respondents with accrued interest, if any.

[SHAILESH P. BRAHME J.]