



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

**SECOND APPEAL NO. 453 OF 2025
WITH
CIVIL APPLICATION NO. 13841 OF 2025**

1. Laxman Dagdu Birajdar
2. Mallappa Dagdu Birajdar
3. Anubai Jyotiba Belle

Versus

1. Shantabai Maruti Birajdar
2. Zakir Maula Batkeri
3. Sandip Wishwanath Sutar

- * Advocate for the Appellants : Mr. Apparao Prakash Yenegure
- * Advocate for the Respondent No. 1 : Mr. Ganesh J. Kore
- * Advocate for the Respondent No. 3 : Mrs. Pooja K. Apache

**CORAM : MEHROZ K. PATHAN, J.
DATE : 5th FEBRUARY 2026**

ORDER :

1. The Appellants have filed the present appeal challenging the judgment dated 01.12.2025 passed by the District Judge-1, whereby MCA No.50/2023 filed by the Appellants for condonation of delay was dismissed. The Appellants had prayed for condonation of delay of 10 years and 3 months in filing the second appeal.

2. The learned Counsel for the Appellants submits that

Defendant No.1 was the father of the Appellants, and after his death, Defendant Nos. 1A to 1D were added as parties to the suit. However, in that suit, the Defendants (present Appellants) were not served with summons, and consequently, an ex parte decree was passed against them. It is contended that the suit property was not ancestral property of the Plaintiff but was recorded in the name of one Laxmibai, who died issueless. After her death, the property devolved upon her stepson, the father of the Appellants, who was the original Defendant No.1. The Plaintiffs had no right in the suit property, yet the learned trial Court granted them half share in the property. The delay in filing the appeal is neither intentional nor deliberate but has occurred due to the aforesaid circumstances. If the delay of 10 years, 3 months, and 28 days is not condoned, the Appellant-Defendants will suffer irreparable loss in the event the impugned decree is executed.

3. It is further submitted by the learned Counsel for the Appellants that the First Appellate Court failed to take into consideration the circumstances in which the delay was caused and rejected the application for condonation of delay without assigning cogent reasons. The impugned order, therefore, needs interference by this Court in the present Second Appeal. The Appellants pray for setting aside the order of the Appellate Court, allowing the appeal, and condoning the delay in filing the First Appeal.

4. As against this, the learned Counsel for Respondent No.1

strongly objected to the appeal on the ground that the suit summons were served upon Defendant Nos. 1A to 1C, who appeared through their advocates but failed to file a written statement, and therefore the suit proceeded uncontested against them. Appellant Laxman was already on record as Defendant No.1B before passing of the decree. Appellant Mallappa was on record as Defendant No.1C, and Appellant Anubai was on record as Defendant No.1D. Defendant No.1D Anubai failed to appear despite service of summons, and the suit proceeded ex parte against her. Defendant No.2 Zaker was the subsequent purchaser of half portion belonging to Dagdu (Defendant No.1 herein). Defendant No.2 Zaker sold the said property to Defendant No.3 Sandip, and they too were added as Defendants in the suit. Thus, all the Defendants were served. Despite appearance through advocates, Defendant Nos. 1A to 1C failed to file any written statement, and the suit went uncontested. Defendant Nos.1 and 2 failed to appear despite service and therefore cannot now claim lack of knowledge about the proceedings before the trial Court. The delay of 10 years, 3 months, and 28 days is inordinate. No sufficient reasons were given in the application filed before the First Appellate Court (MCA No.50/2023). As such, the Appellate Court rightly rejected the application for condonation of delay, having exercised its discretion under Section 5 of the Limitation Act.

5. After hearing the learned Counsels for Appellants and Respondents and after going through the record following substantial questions of law appears to be involved :

(a) Whether the learned First Appellate Court has erred in holding that, the Appellants failed to show the sufficient cause for condonation of delay to file the appeal particularly when the evidence led by the Appellants clearly shows that they have given the just and proper reasons to condone the delay?

(b) Whether the given facts and circumstances it can be said that the so called services of summons defendants no.1B and 1C said to be legal and valid service particularly when the said defendants were minors at the time of services?

6. The learned First Appellate Court dealt in detail with the record of RCS No.44/2005 and found that, after the death of Defendant No.1 on 23.02.2024, Defendant Nos. 1A to 1D were added as legal heirs. Defendant Nos. 1A to 1C appeared in the suit through Advocate Rajesh, while Defendant No.1D failed to appear. Hence, the suit proceeded ex parte against her. Thus, the contention raised by Defendant Nos. 1B and 1C, who are Appellant Nos. 1 and 2 herein, is misconceived, as the record clearly shows that they had appeared through Advocate Rajesh.

. Insofar as Appellant No.3/Anubai, who was the original Defendant No.1D, is concerned, the suit proceeded ex parte against her. Defendant No.1D, that is Appellant No.3 herein, has failed to prove that she was not served with suit summons. No documentary evidence has been brought on record by the Defendant to that effect.

7. It was further observed that the Defendants were shown as majors in age in the amended plaint, and the plea that the Appellants were minors at the time of death of their father,

Defendant No.1, during the pendency of the suit, is unsupported by any pleading to that effect in the application filed by the Appellants under Section 5 of the Limitation Act for condonation of delay in filing the First Appeal.

8. I have gone through MCA No.50/2023 filed by the Appellants, which does not state that the Appellants were minors at the time of the death of their father, nor when they were impleaded in the civil suit as legal heirs of Defendant No.1 on record. In the absence of any such pleading in the application for condonation of delay, the First Appellate Court has rightly rejected the application, recording a finding that the delay of 10 years, 3 months, and 28 days is inordinate and that the Appellants have failed to show any sufficient cause for condonation of such inordinate delay.

9. Thus, for the aforesaid reasons recorded hereinbefore, both the questions of law (a) and (b) stand answered.

10. The Hon'ble Supreme Court in the recent judgment in the case of **Shivamma (Dead) by L.Rs. Vs. Karnataka Housing Board and others** reported in **2025 LiveLaw (SC) 899**, was pleased to hold as under :

147. The expression “may be admitted” vests in the court a discretion, the exercise of which is pre-conditioned to the proof of a “sufficient cause” for the failure to file the appeal or application, as the case may be, within the prescribed period of limitation. It enables a court to either admit or reject any appeal or application, for being barred by limitation, even if “sufficient cause” is shown to its satisfaction. The idea behind vesting the courts with such discretion is to ensure that the power to condone any delay in the filing of an appeal or application, as the case

may be, is exercised only to advance substantial justice, where no prejudice or injustice would be meted from such delay being condoned. Condonation of delay is not a matter of right but a discretion of the court.

167. Once, the material on record lend support to the view arrived at by the court below, the enquiry of the appellate court into the material on record ends. Thereafter, what remains to be seen is only the exercise of discretion by the court below, which warrants a careful and delicate approach from the appellate court. This is because acceptance of the explanation as a sufficient cause is the result of a positive exercise of discretion and normally the appellate court should not disturb such exercise of discretion, unless the exercise of discretion was on wholly waterable grounds or arbitrary or perverse.

262.We are at pains to reiterate this everlasting trend, and put all the High Courts to notice, not to reopen matters with inordinate delay, until sufficient cause exists, as by doing so the courts only add insult to the injury, more particularly in appeals under Section 100 of the CPC, wherein its jurisdiction is already limited to questions of law.

11. It is well-settled law that the powers under Section 100 CPC can be exercised only to evaluate a substantial question of law, if found to be involved in the Second Appeal, without re-appreciating the findings of fact. Thus, no other substantial question of law is involved in the present Second Appeal. Hence, the appeal is devoid of merit and is dismissed with costs. Civil Application is also disposed of.

**[MEHROZ K. PATHAN]
JUDGE**