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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
SECOND APPEAL NO. 490 OF 2025
WITH
INTERIM APPLICATION NO. 10957 OF 2025**

Smt. Bhimabai Kondiba Londhe and ... Appellants/Applicants
Anr

vs.

Maruti Ranu Londhe ... Respondent

Mr. Drupad Patil a/w. Ms. Srushti S. Chalke for the Appellants.
Ms. Meghana Gawalani a/w. Mr. Anand Salgankar for Respondent
Nos. 1 to 3.

CORAM : GAURI GODSE, J.

DATED : 10th JUNE 2026

ORDER:

1. This second appeal is filed by the original defendant nos. 1 and 2 to challenge the order passed by the District Court rejecting their application for condonation of delay in filing the first appeal. The appellants were aggrieved by the trial court's decree for partition and separate possession, and they preferred the first appeal before the District Court, along with an application for condonation of a 288-day delay in filing the appeal.

2. Learned counsel for the appellants submits that the appellants claimed to be the owners through Kondiba, and, according to the appellants, the plaintiffs have no right, title, or interest in the suit property. He submits that the earlier partition suit was dismissed as against the present plaintiffs. He submits that, in view of the sale deeds executed by the appellants in respect of the 2/3rd share and the arrangement in respect of the remaining 1/3rd share, they remained absent from the suit, though served with the summons. In the last week of July 2013, when they inquired with the purchaser about the suit, they found it had been decreed. The appellants applied for certified copies and took steps to file the first appeal. He further submits that the first appellate court, being the last fact-finding court, ought to have considered the reasons for condonation of delay liberally and granted an opportunity to the appellants to prosecute the appeal on the merits. Learned counsel for the appellants relied upon the facts pleaded in the application for condonation of delay in paragraph no. 2 of the application.

3. Learned counsel for the appellants further submits that dismissal of the application for delay condonation caused serious prejudice to the appellants' right as they are the exclusive owners of the suit property. He therefore submits that the first appellate court

should have considered the application for condonation of delay with a liberal approach instead of adopting a hyper-technical view. He therefore submits that the second appeal would raise a substantial question of law as to whether the first appellate court, being the last fact-finding court, should have adopted a liberal approach in considering the application for condonation of delay in filing the appeal against the decree of partition and separate possession. He therefore submits that the impugned order would require interference in this second appeal.

4. Learned counsel for the respondents/plaintiffs submitted that the appellants have raised no ground to condone the delay. Though aware of the suit and the decree passed, they have taken no steps and are now making every effort to delay the execution of the partition decree.

5. I have perused the papers of the second appeal. The suit filed by respondent nos. 1 to 3 on 17th May 2006 was decreed on 1st January 2013. There is no dispute that these appellants were served with the suit summons, and they appeared before the trial court. Despite appearing in the trial court, they chose not to file any pleadings on the merits of the suit. There was never any attempt to set aside the ex parte order against them in the suit. The trial court

decreed the suit on 1st January 2013, granting a 1/3rd share to the plaintiffs.

6. I have perused the application for condonation of delay. Except for the pleading on the merits of the suit for partition and separate possession, no satisfactory explanation for condonation of delay is pleaded by the appellants. The reason for not proceeding in the suit is that 2/3rd of the share was sold by them to third parties, and the remaining 1/3rd was to be sold after correction of the revenue record. The first appellate court has therefore held that no affidavit of the third-party purchaser has been filed to support the appellants' contentions regarding their failure to take any steps despite service of the writ of summons. The contentions raised in the application for condonation of delay are disputed by the original plaintiffs.

7. The first appellate court rejected the application by holding that no satisfactory reason was pleaded to condone the delay. There is no dispute that the appellants, though served with the suit summons, intentionally remained absent. Admittedly, there is no supporting evidence or any affidavit filed to support the contention raised in the application for condonation of delay. Therefore, merely shifting the burden on the purchasers is not considered acceptable

to condone the delay. The first appellate court has therefore examined the reasons in the application for condonation of delay and, for want of any satisfactory explanation, has refused to exercise the discretion to condone the delay.

8. I see no illegality in the reasons recorded by the first appellate court. Except for raising grounds on the merits of the suit and shifting the burden on the purchasers, the application is bereft of any explanation and/or justification for not taking any steps to file an appeal within time. The grounds raised in the application and in this second appeal on the merits of the suit cannot be considered as sufficient and justifiable grounds to condone the delay in filing the appeal. There is no illegality or perversity in the appreciation of the facts by the first appellate court.

9. The second appeal does not raise any substantial question of law. Hence, the second appeal is dismissed. In view of the dismissal of the second appeal, the interim application is disposed of as infructuous.

(GAURI GODSE, J.)