

MHSN170032172020



Received on : 14.06.2022
 Registered on : 22.07.2022
 Decided on : 12.08.2024
 Duration : Ys. M. Ds.
 02 01 29
 Exh.No. : 25

IN THE DISTRICT COURT, VITA, AT VITA
(Presided over by R.R.Bhagwat, District Judge -1 Vita)

Civil Misc.Appln.No.67/2024
(Old Civil M.A.No.131/2022)

Tukaram Hindurav Kale,	)	
Deceased through legal heirs	)	
	)	
1/1 Nishant Tukaram Kale,	)	
Age 35 Years, Occu.Service,	)	
	)	
1/2 Rekha Tukaram Kale,	)	<u>Applicants</u>
age 30 Years, Occu.Household,	)	
	)	
1/3 Mangesh Tukaram Kale,	)	
Age 26 Years, Occu.Service,	)	
	)	
2. Vishwanath Hindurao Kale,	)	
age 69 Years, Occu.Agr.,	)	
A.Nos.1/1 to 1/3 and 2	)	
R/o.Chinchani (Wangi),	)	
Tal.Kadegaon, Dist.Sangli.	)	
	)	
	)	

3. **Namdev Hindurao Kale,**)
Age 67 Years, Occu.Service,)
R/o.Brahmanpada, Paach)
Pandev Colony, Room No.6,)
Chal No.3, Ulhasnagar-4,)
Kalyan.)
)
4. **Bapurao Hindurao Kale,**)
Age 61 Years, Occu.Service,)
R/o.Chinchani (Wangi),)
Tal.Kadegaon, Dist.Sangli.)
)
5. **Arun Hindurao Kale,**)
Age 60 Years, Occu.Service,)
R/o.Chinchani (Wangi),)
Tal.Kadegaon, Dist.Sangli.)
)
6. **Vinod Prakash Kale,**)
Age 41 Years, Occu.Service,)
)
7. **Rupesh Prakash Kale,**)
Age 37 Years, Occu.Service,)
)
8. **Reshma Prakash Kale,**)
age 37 Years, Occu.Household)
)
9. **Hemangi Prakash Kale,**)
Age 35 Years, Occu.Service,)
)
10. **Smt.Chaya Prakash Kale,**)
Age 64 Years, Occu.Household)
A.Nos.6 to 10 all R/o. B.B.D.)
Chal, Chal No.27, Dilai Road,)
Mumbai.)
)

Applicants

11. **Sou.Janabai Waman Howale,**)
 Age 74 Years, Occu.Household)
 R/o.Vishwadham Co-op Hsg.)
 Society, B.No.193/7449,)
 Kannamwar Nagar No.2,)
 Vikroli (East) Mumbai-85.)
)

12. **Sou.Shobha Gautam Kolekar,**)
 Age 58 Years, Occu.Household)
 R/o.Nehru Nagar, Policeline,)
 Building No.42, Kurla)
 Mumbai.)
)

13. **Sou.Pushpa Dilip Ghumkar,**)
 Age 56 Years, Occu.Household)
 R/o.Dhum, Tal.Wai,)
 Dist.Satara.)
)

14. **Smt.Savita Narendra Vathane**)
 Deceased through Legal Heirs)
)

14.1 **Purva Narendra Vathane,**)
 Age 24 Years, Occu.Household)
 R/o.Chinchani (Wangi),)
 Tal.Kadegaon, Dist.Sangli.)
)

15. **Smt.Tulsabai Hindurao Kale**)
 Deceased.)
)

Applicants

VERSUS

1. **Baburao Pandu Kale**)
 Deceased through legal heirs)
)
)

Respondents

- | | | | |
|-----|-----------------------------------|---|---------------------------|
| 1.1 | Sunil Baburao Kale, |) | |
| | age 60 Years, |) | |
| | Occu.Service/Agri., |) | |
| | |) | |
| 1.2 | Naresh Baburao Kale, |) | |
| | Age 56 Years, |) | |
| | Occu.Service/Agri., |) | |
| | |) | |
| 1.3 | Sou.Rekha Bhikaji Adsule, |) | <u>Respondents</u> |
| | Age 58 Years, Occu.Agri., |) | |
| | |) | |
| 1.4 | Smt.Sunanda Rajendra |) | |
| | Kamble, |) | |
| | Age 58 Years, Occu.Agri., |) | |
| | |) | |
| 1.5 | Smt.Shewanta Baburao Kale, |) | |
| | Age 69 Years, Occu.Nil, |) | |
| | All R/o.Chinchani (Wangi), |) | |
| | Tal.Kadegaon, Dist.Sangli. |) | |
| | |) | |

Application under section 5 of Indian Limitation Act,1963.

Adv. Shri M.H.Gramopadhye for the Applicants.

Adv. Shri V.P.Salunkhe for the Respondents.

JUDGMENT

(Delivered on 12.08.2024)

1. This is an application under section 5 of the Limitation Act for condoning the delay in filing Regular civil appeal against the Judgment and decree dt. 19.11.2019 passed by Ld. Civil Judge,Jr.Divn., Kadegaon in RCS No.132/2010 decreeing the suit for partition, separate possession and

permanent injunction. Perused the application and say filed by the respondents. Heard Ld. Counsel Shri M.H. Gramopadhye for the applicants and Ld. Counsel Shri V.P. Salunkhe for the respondents.

2. On perusal of contents in Exh.1, it appears that impugned Judgment is pronounced on 19.11.2019. Present application is filed on 14.06.2022. Ld. Counsel Shri M.H. Gramopadhye for the applicants relied upon order of Hon'ble Supreme Court in the Suo Moto Writ Petition (Civil) No.3/2020 dt. 10.01.2022 for excluding period from 15.03.2020 to 28.02.2022 while calculating delay. On the contrary, Ld. Counsel Shri V.P. Salunkhe for the respondents submitted that limitation to file appeal was already over before 15.03.2020 and therefore, observations in above referred order of Hon'ble Supreme Court are not applicable to the facts of the present case. He further submitted that no proper explanation is given by the applicants for seeking condonation of delay.

3. Considering rival submissions and material on record, it appears that though limitation to file appeal is expired before 15.03.2020, the applicants were prevented from approaching the Court during Covid-19 pandemic. Therefore, delay in presenting this application appears to be lengthy. Even then, period of Covid-19 pandemic can be considered for limited purpose of reckoning actual delay in presenting this application.

If period of Covid-19 pandemic is excluded, delay of 5 to 6 months can be said to have been caused in presenting present application. The applicants seem to have obtained certified copies in June, 2022 and thereafter, they approached their advocate. Considering all attending circumstances and effect of Judgment and decree likely to be caused on interest of the applicants, delay can be condoned by imposing reasonable cost. Hence, I pass the following order: -

ORDER

1. Civil M.A.No.87 of 2024 is allowed subject to costs of Rs.10,000/- payable to the respondents or their advocate within a period of one month from the date of this order.
2. Delay in filing Regular civil appeal against the judgment and decree passed by Ld. Civil Judge,Jr.Divn., Kadegaon in RCS No.132/2010 dt.19.11.2019 is condoned subject to compliance of above direction.
3. Regular Civil Appeal shall be registered on payment of costs within one month from the date of this order.
4. Proceeding of Civil M.A.No.87/2024 is closed accordingly.

(Dictated and pronounced in open court)

Vita
dt.12.08.2024

(R.R.Bhagwat)
District Judge - 1,Vita.

CERTIFICATE

I affirm that, the contents of this PD.F file, are same word to word, as per the original order/judgment.

Name of Stenographer	: S.V.Agnihotri (Steno Grade-I)
Court	: DJ-1 & Addl. Sessions Judge,Vita
Date of order	: 12.08.2024
Signed by Presiding officer on	: 12.08.2024
Uploaded on	: 12.08.2024