

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

CIVIL APPLICATION NO. 10947 OF 2014
IN
SECOND APPEAL (ST.) NO.23792 OF 2014

Vasant Kundlik Randive
and ors.

..APPLICANTS

VERSUS

Dagdu Tatyaba Randive

..RESPONDENT

Mr B.V. Wagh, Advocate for applicants;
Mr N.T. Tribhuwan, Advocate for respondent

CORAM : N.W. SAMBRE, J.
DATE : 23rd JANUARY, 2015

ORAL ORDER:

This is an application for condonation of delay of 661 days caused in preferring Second Appeal.

2. Regular Civil Suit No.186 of 2006 came to be dismissed on 22nd January, 2008, by Civil Judge Junior Division, Shevgaon, which was subject-matter of Regular Civil Appeal No.50 of 2008 at the behest of the respondent herein.

3. In the said appeal, the applicants/original defendants did not put in their appearance, as such, appeal came to be allowed and suit came to be decreed by judgment and decree dated 16th August,

2012, passed by District Judge-5, Ahmednagar, granting perpetual injunction, thereby restraining the applicants herein from obstructing the plaintiff for taking water from the well, situated in Survey No.29/3.

4. It is claimed in the application for condonation of delay that the elder brother of the applicants herein, namely, Jagannath who was pursuing the matter, expired on 8th September, 2012. His death certificate is placed on record so as to canvass that on account of his death, there is delay in preferring the appeal. One more ground pressed into service is about illiteracy of applicant no.1 herein.

5. If the above referred facts are taken together, in my opinion, it takes this Court to the conclusion that Jagannath was never looking after the proceedings as the appeal came to be allowed on 16th August, 2012, in which Jagannath or present applicants never put in their appearance. In fact, Jagannath expired immediately after the decision in Regular Civil Appeal No.50 of 2008, i.e. on 8th September, 2012 and the appeal was decided on 16th August, 2012.

6. The present applicants have chosen to appear before the Executing Court on 4th October, 2013, however, have not preferred the appeal immediately thereafter.

7. In my opinion, the reasons cited for condonation of delay are not germane to the cause. Thus, the present Civil Application stands rejected with no order as to costs.

8. In view of rejection of the instant Civil Application, Second Appeal stands rejected, as also Civil Application No.10948 of 2014 stands disposed of.

(N.W. SAMBRE, J.)

amj