

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY.
CIVIL APPELLATE JURISDICTION.**

**CIVIL APPLICATION NO. 1192 OF 2012
IN
SECOND APPEAL (ST.) NO. 12896 OF 2012**

Shri. Mahadeo Laxman Kudale
(since deceased through his legal heirs)
Shri. Dattatray Laxman Kudale & Anr. ... Applicants.
V/s.
Shri. Pandurang Govind Khamgal & Ors. ... Respondents

Ms. Tejas Kapre i/b Sanjay Kshirsagar for the applicant.

**CORAM : K. K. TATED, J.
DATED : 04/09/2015.**

P.C.:

. Heard learned Counsel for the applicant.

2 This application is preferred by defendant for condonation of 3 years and 176 days in filing Second Appeal challenging the decree dated 07.07.2008 passed by the Appellate Court in Civil Appeal No. 24 of 2002.

3 The learned Counsel for the applicant submits that applicant filed application for certified copy on 17.07.2008. The same was ready for the delivery on 13.08.2008 and thereafter, the applicant filed the present Second Appeal in this Court on 21.04.2012.

4 The learned Counsel for the applicant submits that in the meanwhile, the original defendant Mahadeo Laxman Kudale, died on

17.05.2009.

5 The learned Counsel for the applicant submits that the applicant first time learnt about the decree passed by the Appellate Court when the respondent plaintiff tried to disturb their possession on the basis of mutation entry no. 1084. She submits that thereafter, the applicant made inquiry and filed application no. 61 of 2011 before the Revenue Authority for correcting the mutation entry. During that period the applicant learnt about the Judgment and Decree passed by the Appellate Court in Civil Appeal No. 24 of 2012.

6 The learned Counsel for the applicant submits that applicant no.1 was young at that time and he was not in position to take any decision. She submits that the applicant no.2 is uneducated and he does not understand the consequence of non filing of appeal to challenge the decree. Hence, they preferred the Second Appeal.

7 The learned Counsel for the applicant submits that they have good chance of success in the present matter. She submits that because of illiteracy and financial difficulty, there is delay in preferring the present Second Appeal in this court. She submits that in the interest of justice, this Hon'ble Court be pleased to condone the delay in preferring the Second Appeal and matter to be heard on its own merits.

8 I heard the learned Counsel for the applicant at length. In the present proceeding, the Appellate Court passed decree dated 07.07.2008 and thereafter, certified copies were collected by the

defendant on 13.08.2008. The original defendant died on 17.05.2009. The original defendant had knowledge about the dismissal of the Civil Appeal No. 24 of 2002 on 07.07.2008. The original defendant failed to take appropriate steps for filing the appeal during his life time. After the death of original defendant, the applicants filed the present Second Appeal on 21.04.2012. The reasons given by the applicant in paragraph 3 of Civil Application about want of knowledge, illiteracy and financial difficulty cannot be considered as a sufficient cause for condonation of inordinate delay of more than 3 years.

9 The Apex Court in the matter of **Pundlik Jalam Patil Vs. Ex.Engg. Jalgaon Medium Project and Ors, 2008(6) BCR 513** held that unless and until sufficient cause is shown, inordinate delay should not be condoned.

10 The Apex Court in the matter of **Oriental Aroma Chemical Industries Limited Vs. Gujarat Industrial Development Corporation reported in 2010 (5) SCC 459**, held that in the absence of sufficient cause, Court should not condone the delay.

11 The Apex Court in the case of **B. Madhuri Gaud Vs. B. Damodar Reddy, 2012 (12) SCC 693** held that if sufficient cause is not shown, delay should not be condoned.

12 the Apex Court in the matter of **Esha Bhattacharajee Vs. Managing Committee of Raghunathpur Nafar Academy 2013(12) S.C 450** held that if sufficient cause is not shown, application for

condonation of delay be rejected.

13 Considering the submissions made by the learned Counsel for the applicant, averments made in Civil Application and as law laid down by the Apex Court in the above referred matters, I do not find any substance in the present Civil Application.

14 Hence, Civil Application stands rejected.

15 In view of rejection of the Civil Application for condonation of delay, nothing survives in the Second Appeal as well as in Civil Application no. 1193 of 2012. Hence, the same stands rejected.

(K.K.TATED, J.)