

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

**CIVIL APPLICATION NO. 4491 OF 2009
IN
SECOND APPEAL STAMP NO. 8398 OF 2009**

Rajendra Raosaheb Borkar

...APPLICANT

versus

Gitabai W/o Dattatrya Phalke and ors.

...RESPONDENTS

.....
Mr. A.M. Gholap, Advocate for applicant

Ms. Madhuri U. Kakade, Advocate holding for

Ms. M.S. Mhase – Thube, Advocate for respondents No. 3, 4, and 5

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CORAM : SUNIL P. DESHMUKH, J.

DATED : 22nd JANUARY, 2016.

Order :-

1. This application is filed by original defendant No. 1 for condonation of 833 days delay caused in preferring second appeal against the order dated 29-09-2006 in Miscellaneous Civil Application No. 172 of 2005 passed by ad-hoc additional district judge, Ahmednagar, dismissing application for condonation of delay in filing regular civil appeal against judgment and decree dated 07-11-2003 in regular civil suit No. 352 of 2000 passed by joint civil judge, junior division, Ahmednagar.

2. Learned counsel for the applicant states that initially applicant appellant had preferred writ petition against the order rejecting application for condonation of delay by the district court. However, subsequently, it was considered that writ petition may not be remedy, and in the situation, second appeal would lie. In the circumstances,

second appeal has been filed and as such delay has occurred.

3. It is further being pointed out by the learned counsel for the applicant that writ petition had been filed within time stipulated for preferring second appeal and after the order passed in writ petition by this court on 19-03-2009 the present second appeal has been immediately preferred on 15-04-2009.

4. Learned counsel for the respondents is not in a position to dispute veracity of the contents in civil application and submission on behalf of the applicant.

5. In view of the same, delay stands condoned. Civil application is allowed in terms of prayer clauses "B" and disposed of.

Sd/-

(SUNIL P. DESHMUKH, J.)

MTK