

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

**CIVIL APPLICATION NO. 1356 OF 2015
IN SAST/30269/2014**

**IFTEKAR ABDUL HAMID KHAN AND OTHERS
VERSUS
SAYYED ANWAR SAYYED ABBAS AND ANOTHER**

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Mrs.S.T.Kazi, Advocate for applicants

Mr.B.A.Agrawal, Advocate for respondent no.1

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CORAM : SANGITRAO S. PATIL, J.

DATE : JULY 12, 2017

PER COURT :

Heard the learned Counsel for the applicants and that of the respondents.

2. The applicants have prayed for condonation of delay of 30 days in filing the appeal. For the reasons stated in paragraph 5 of the application, the applicants have sought to explain the delay.

3. Respondent no.2 filed reply and opposed the application. None appeared for respondent no.1 when the matter was called out.

4. According to the applicants, after obtaining the certified copy of the impugned judgment and decree, they were supposed to file the appeal within the prescribed period of limitation, however, they could not arrange for the amount required for paying Court fees, Advocate's fees and meeting other expenses for filing the appeal. Moreover, the applicants are suffering from various ailments due to their old age. Consequently, there is delay of 30 days in filing the appeal. The learned Counsel for the applicants submits that the dispute pertains to immovable property, wherein the rights of the parties are involved. The delay is not deliberate and intentional. She submits that the delay may be condoned.

5. The learned Counsel for the respondents submits that the grounds of delay are not satisfactory and sufficient. He, therefore, prays that the application may be rejected.

6. Financial difficulty of the applicants seems to be the major reason for filing the appeal beyond the prescribed period of limitation. The applicants cannot be said to have been benefited by causing delay deliberately. It is well settled that in the matter of condonation of delay, liberal approach has to be taken. It seems that the delay is not deliberate or intentional. In the circumstances, I accept the grounds shown by the applicants for the delay in filing the appeal, as sufficient and satisfactory. Delay deserves to be condoned, of course, on payment of costs. The application is liable to be allowed with the following order :-

(i) Delay in filing the Second Appeal is condoned, subject to payment of costs of Rs.1,000/- (Rs.One Thousand) by the applicants to respondent no.2.

(ii) The Civil Application stands allowed accordingly.

(iii) Registry to take further steps in the matter of registration of the appeal.

[SANGITRAO S. PATIL, J.]

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