

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

955 CIVIL APPLICATION NO. 16290 OF 2015
IN FAST/32366/2015 WITH CA/16215/2015 IN
FAST/32366/2015

SYED AYUB SYED BABAR ALI

VERSUS

SYED AMJAD SYED ISHAQ ALI AND ANOTHER

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Advocate for Applicant : Mr. Surve Hemant And Kshitij
Surve.

Advocate for Respondent No. 1 : U A Bhadgaonkar

CORAM : K. L. WADANE, J.

DATE : 31st August, 2017

ORDER:

1. Heard Mr. Surve, learned counsel appearing for the applicant. None present for the respondents.

2. This is an application for condonation of delay of 875 days caused for filing the appeal. From the record it reveals that, the appeal was wrongly presented before the District Court on 09.04.2013 and the learned District Judge on 06.10.2015 returned the appeal-memo for its presentation before the appropriate Court. Hence, the applicant has presented this appeal before this Court on 19.10.2015. So there is delay of 875 days for filing of the appeal.

3. Mr. Surve, learned counsel has relied upon the provisions of section 14 of the Limitation Act, 1962 :

"14. Exclusion of time of proceeding bona fide in Court without jurisdiction – (1) In computing the period of limitation for any suit the time during which the plaintiff has been prosecuting with due diligence another civil proceeding, whether in a Court of first instance or of appeal or revision, against the defendant shall be excluded, where the proceeding relates to the same matter in issue and is prosecuted in good faith in a Court which, from defect of jurisdiction or other cause of a like nature, is unable to entertain it.

(2) In computing the period of limitation for any application, the time during which the applicant has been prosecuting with due diligence another civil proceeding, whether in a Court of first instance or of appeal or revision, against the same party for the same relief shall be excluded, where such proceeding is prosecuted in good faith in a Court which, from defect of jurisdiction or other cause of a like nature, is unable to entertain it.

(3) Notwithstanding anything contained in rule 2 of Order XXIII of the Code of Civil Procedure, 1908, the provisions of sub-section (1) shall apply in relation to a fresh suit instituted on permission granted by the Court under rule 1 of that Order, where such permission is granted on the ground that the first suit must fail by reason of a defect in the jurisdiction of the Court or other cause of a like nature."

and thereby prayed to exclude the period between the date of presentation of the appeal and the date of return of the appeal-memo by the District Court. According to Mr. Surve under the bonafide belief, the appeal was presented before the District Court, which is not proper forum. Therefore, he prays to condone the delay.

4. In view of the above, I am of the opinion, the delay caused for filing the appeal is properly explained, therefore, it needs to be condoned. Hence, the civil application is allowed.

5. Delay caused for filing appeal is condoned.

6. Civil Application is disposed of.

7. Issue notice in first appeal returnable on 09.11.2017.

(K. L. WADANE, J.)

mkd