

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
CIVIL APPLICATION NO.171 OF 2014**

IN

SECOND APPEAL (ST) NO.1928 OF 2014

Nagammabai Ramchandra Jinage ... Applicant
versus
Ambadas Narayan Mushan (deceased)
through L.R.s and Ors. ... Respondents

Mr. Satish Modi i/by M/s. Kumar and Associates, for Applicant.
Mr. Dnyaneshwar Deshmukh for Respondent Nos.2A, 2B, 2D and 2E.

CORAM: S.J. KATHAWALLA, J.

DATE: 4th JULY, 2017

P.C.:

1. The above Civil Application is taken out by the Applicant seeking condonation of delay of three years and 121 days in filing the above Second Appeal. Perused the Civil Application and the Affidavit in Reply filed by the Respondents. The Applicant is a 72 year old lady who is illiterate. Her son who has studied upto the 12th standard is running a grocery shop at Solapur. After obtaining the certified copy of the impugned order, he had handed over the papers to Advocate A.G.Rajput at Solapur, who in turn forwarded the same to Advocate M.R.Katkar at Mumbai with instructions to file a Second Appeal. The said Advocate Mr. Katkar has passed away and the Applicant had been informed that the Appeal is not filed. Even Advocate A.G.Rajput who had forwarded the papers to Advocate Mr. Katkar has passed away.
2. The learned Advocate for the Respondent states that the particulars such as the dates on which the papers were handed over to Advocate Rajput at Solapur and

Mr. Rajput thereafter handing over to Mr. Katikar at Mumbai are not provided.

3. Looking at the advanced age of the Applicant and the educational background of her family members and herself, it is obvious that the Applicant and her family members rely upon whatever is told to them by their Advocates. One cannot expect them to keep a note of dates on which they visit their Advocate, forward the papers to their Advocate or details with regard to the enquiry made by them with their local Advocate of the progress of their matter. The fact cannot be ignored that on visiting their Advocate/s if they are told that necessary steps have been taken in the matter and they will be informed about the same in due course, they wait for their local Advocate to inform them qua the outcome of the proceedings. In the circumstances, the Applicant cannot be made to suffer and deprived of her right to file an Appeal despite the delay. The delay in filing the above Second Appeal is therefore condoned. The above Civil Application is therefore disposed off.

4. The Advocate for the Applicant/Appellant shall remove office objections within a period of one week from today. Office shall after removal of office objections, forthwith number the Appeal. The learned Advocate for the Respondents waives service. Place the Second Appeal for Admission on 24th July, 2017, high on board.

(S.J.KATHAWALLA, J.)