

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

22. CIVIL APPLICATION NO. 15338 OF 2016
IN
SAST/11470/2016

RAKHMABAI PANDIT PATIL AND ANR.
VERSUS
ZATING MOTIRAM PATIL

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Mr. A.S.Abhyankar h/f Mr. S.V.Natu,
Advocate for applicants.

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CORAM: VL.ACHLIYA, J.
DATE : 27/08/2018

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ORAL ORDER :

1. The applicants/appellants have moved this application for condonation of 332 days delay in filing this appeal.
2. Heard learned counsel for applicants/appellants. The respondent though served, absent.
3. Mr. Abhyankar, learned counsel for applicants submits that the delay caused in filing appeal is not deliberate and intentional, but caused due to mis-understanding the applicants were carrying about pendency of earlier appeal filed by appellants before this Court. It is submitted that the applicants are illiterate and poor agriculturists. In the first round of litigation, the matter was carried to this Court by way of S.A. No. 575 of 2005. By the Judgment and order dated 12/10/2010 passed by this Court, the case was remanded to the trial Court with

direction to decide the same afresh after framing additional issues and appointing Taluka Inspector of Land Records [for short, 'T.I.L.R.'] or such other competent person to measure the land owned by the plaintiff and defendants. He submits that trial Court decided the Suit without following the directions contained in the order of remand passed by this Court and more particularly joint measurement of land. He submits that as against the Judgment and order passed by trial Court to decree the Suit, the applicants have preferred appeal before the first appellate Court. First appellate Court decided the appeal vide Judgment and order dated 20/02/2015. The application for certified copy was submitted on 15/03/2016 and the copies were received on 23/03/2016. The applicants were under impression that their earlier appeal preferred before this Court is pending and under that impression, no steps were taken on their part to file second appeal. On receiving advise that they are required to file second appeal against the Judgment and order of the first appellate Court, they have filed appeal. In the process, delay of 332 days has been caused. It is contended that the applicants have very good case to succeed in appeal and in case delay is not condoned, it may result in meritorious matter to be rejected for technical reason. In support of the submissions advanced, learned counsel has relied the decision of Apex Court in the case of *N.Balakrishnan V/s M.Krishnamurthy reported in 1998 (7) SCC 123* and submits that liberal approach may be adopted in condoning delay.

4. The respondent though served, absent.

5. On due consideration of submissions advanced in the light of challenge raised in appeal, I am of the opinion that sufficient cause has been assigned to condone delay. In case delay is not condoned, the possibility can not be ruled out that meritorious matter may be rejected

for technical reason. In case delay is condoned, no serious prejudice would cause to the other side as ultimately the matter will be decided on merit. In the light of unchallenged pleadings, I am inclined to allow the application. Hence, the following order.

ORDER

The application is allowed in terms of prayer clauses 'A' and 'B'.
Delay condoned. Appeal be registered.

[V.L.ACHLIYA]
JUDGE

KNP/C.A. 15338.2016 in S.A.St. 11470.2016