

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

**22 CIVIL APPLICATION NO. 11433 OF 2017
IN SAST/25886/2017 WITH CA/11434/2017 IN
SAST/25886/2017**

RAMBHAU GOPINATH LOKHANDE
AND ANOTHER

.. Applicants

VERSUS

SHILPA SATISH SURWASE AND OTHERS

..Respondents

...

Shri M.G. Kasturkar, Advocate, h/f. Smt. M.A. Kulkarni,
Advocate for the Applicants

Shri R.K. Jadhavar, Advocate for Respondents No.1 to 6

Shri A.M. Kulkarni, Advocate for Respondent No.8

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CORAM : PR. BORA, J.

Dated: July 09, 2018

PER COURT :

1. Heard the learned Counsel for the applicants /
appellants and the learned Counsel for the respondents.

2. Delay of 474 days has occurred in filing the second
appeal. It is the contention of the applicants that, they came to
know about the dismissal of the First Appeal on 08.07.2017
when they met their Counsel, who was representing them in the
First appeal. That, the First Appeal has been dismissed on
15.01.2016. It is further contended that, the moment applicants
became aware of the dismissal of the First Appeal, the

application was made for obtaining certified copy and thereafter within the shortest possible time, the second appeal has been preferred. The learned Counsel for the applicants submitted that, the delay is unintentional and for the reasons beyond the control of the applicants.

3. The learned Counsel for the respondents has opposed for condoning the delay stating that, it cannot be believed that though the first appeal was filed in the year 2014 for next three years the appellants / applicants would not have even made an enquiry as to the stage of their first appeal. The learned Counsel submitted that, the huge delay has not been sufficiently explained and he has, therefore, prayed for rejecting the application.

4. I have duly considered the submissions made by the learned Counsel appearing for the respective parties. It is true that, the delay caused is of a huge period of more than one year, however in absence of any contrary evidence brought on record, apparently there seems no reason to disbelieve the statement

made by the applicants that, they came to know about dismissal of the First Appeal only in the year August - 2017. In the circumstances, it appears to me that, by imposing certain costs, the appellants/applicants needs to be given an opportunity to agitate the appeal on merits. Hence the following order.

ORDER

- (i) The Civil Application (No.11433 of 2017) is allowed.
- (ii) Delay caused in filing the appeal is condoned subject to cost of Rs.5,000/-.
- (iii) Second Appeal be registered in accordance with law.

(PR. BORA, J.)