

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

908. CIVIL APPLICATION NO. 6499 OF 2018
IN
SAST/25901/2017

BALUBHAI PRAGJI AND COMPANY,
NANDURBAR AND ORS.

VERSUS

RADHABAI GOVINDSING PARDESHI
- DIED THR. L.RS. SARIYABAI AND ORS.

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Mr. R.R.Mantri, Advocate for applicants.

Mr. S.V.Natu, Advocate for R - 1-A to 2-C.

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CORAM: VL.ACHLIYA, J.

DATE : 27/09/2018

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ORAL ORDER :

1. The applicants/appellants have taken out this application for condonation of 15 days delay in filing second appeal.

2. Heard learned counsel for applicants and respondent No. 1-A to 2-C. Respondent Nos. 3 and 4 though not served, learned counsel for applicants submits that applicant Nos. 1-A to 2-C are only contesting respondents. The respondent Nos. 3 and 4 are in fact the co-plaintiffs in Suit. Pursis is also filed to transpose them as appellants.

3. Learned counsel for applicants submits that the delay caused in filing appeal was not deliberate but due to reason the considerable time was spend in contacting each of the applicant residing at different places within the country and outside the country. So also there was a communication gap between

Advocate and parties. Some time also spent in collecting the documents as per instructions of Advocate. It is, therefore, contended that delay being not intentional, same deserves to be condoned. If delay is condoned, no serious prejudice would cause to respondents as ultimately the appeal will be decided on its own merit.

4. On the other hand, learned counsel for respondent Nos. 1-A to 2-C opposed the application with contention that the cause assigned is not sufficient to condone the delay. He submits that the reasons assigned are false and concocted and urged to reject the application.

5. On due consideration of the submissions advanced in the light of cause assigned to condone the delay, I am of the view the delay of 15 days caused in filing appeal deserves to be condoned. In the light of unchallenged pleadings made in the application as to the cause assigned as to delay in filing appeal, there is no reason to disbelieve the reasons assigned to condone the delay. In case delay is condoned, no prejudice would cause to the respondents. On the other hand, if delay is not condoned there is likelihood that the meritorious matter may be rejected for technical reasons. Thus, keeping in mind the broad principles laid down by Apex Court in the case of *Isha Bhattacharjee V/s Managing Committee of Raghunathpur Nafar Academy and Ors. reported in (2013) 12 SCC 649*, I am inclined to allow the application. Accordingly, the application is allowed in terms of prayer clause 'A'. Delay condoned. Appeal be registered and place for admission on 11/10/2018.

6. Interim relief operating to continue till the next date on same terms and conditions.

7. S.O. 11/10/2018 in urgent admission category.

[V.L.ACHLIYA]
JUDGE

KNP/C.A. 6499.2018 in S.A.St. 25901.2017