

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

BENCH AT AURANGABAD

919 CIVIL APPLICATION NO.11509 OF 2018
IN SAST/27363/2018 WITH CA/11510/2018 IN SAST/27363/2018

VYANKAT RAM RATHOD AND OTHERS
VERSUS
RIYAJ AHMED MOHAMMAD SALIM AND OTHERS

...
Advocate for Applicants : Shri P.R. Katneshwarkar
Advocate for Respondent nos.1 & 2 : Smt. M.A. Kulkarni

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CORAM: V.L. ACHLIYA, J.

DATE: 26.09.2018

PER COURT :

1] Learned counsel for the applicants undertakes to carry out deletion of name of respondent nos.1 & 2 during the course of the day.

2] The applicants have taken out this application to condone 57 days delay in filing the appeal for the reasons set out in the application.

3] Heard learned counsel for the applicants and the respondent nos.1 and 2.

4] In brief, it is the contention of the learned counsel for the applicants that the delay caused in filing the second appeal is not deliberate, but for the

reason that the applicants were prosecuting the remedy before another Court by filing a writ petition under the belief that no second appeal was maintainable against the impugned order.

5] In view of the decision rendered by the Apex Court that as against the rejection of application for condonation of delay, the remedy is available by way of second appeal, the applicants have withdrawn the writ petition with liberty to file the appeal. By order dated 4.9.2018 passed by this Court in Writ Petition No.9690/2018, the applicants were permitted to withdraw the petition with liberty to file the second appeal. While passing the order, the Court has also expressed that the time spent in prosecuting the remedy by way of writ petition may be considered while considering the request for condonation of delay. In this background, the learned counsel submits that the cause assigned for condonation of delay is sufficient to condone the delay of 57 days.

6] On the other hand, learned counsel for the respondents opposed the application with a contention that the cause assigned cannot be considered to be

- 3 -

sufficient cause to condone the delay. She further submits that in case the delay is condoned, heavy costs may be imposed.

7] On due consideration of the submissions advanced in the light of reasons assigned to condone the delay and further perused the order dated 4.9.2018 passed in the matter, I am of the view that the applicants have sufficiently explained the delay caused in filing the appeal. I am, therefore, inclined to allow the application.

8] Accordingly, the civil application is allowed in terms of prayer clause (B). Delay is condoned. The appeal be registered and placed for admission on 1.10.2018.

(V.L. ACHLIYA, J.)