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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

**SECOND APPEAL (ST) NO.27674 OF 2016
WITH
CIVIL APPLICATION NO.1953 OF 2016
IN
SECOND APPEAL (ST) NO.27674 OF 2016**

Jalindar Punaji Thorat and ors ... Appellants.
V/s.

Dnyandeve Ganpat Jagdale and
ors ... Respondents

Mr. Kuldeep U. Nikam, for the appellants.
Mr. Rahul S. Kadam, for respondent No.1.

CORAM : DR.SHALINI PHANSALKAR-JOSHI, J.

DATE : 24th JULY, 2018.

P.C. :

- 1] Heard learned counsel for the appellants and respondents
- 2] This Second Appeal is preferred against the order dated 20.2.2016, passed by the District Judge, Barshi in Misc. Civil Application No.90 of 2014, which was preferred by the appellant for condonation of delay of 34 days, occasioned in preferring the First Appeal against the judgment and decree dated 11.04.2014, in Regular Civil Suit No.54 of 1997, passed by Civil Judge Junior Division, Karmala.
- 3] The said suit was filed by the respondent for removal of

encroachment and possession of enroached land. After the suit was decreed on merits, appellants herein had filed this application for condonation of delay in preferring the First Appeal.

4] The reasons given in the application are that the suit was decreed on 11.04.2014. However, appellants had applied for certified copy on 29.5.2014. They received the same on the very day. However, the appellants had failed to file the appeal within the period of limitation, due to agricultural field work and other personal difficulties and therefore there is delay of 34 days in filing the appeal.

5] The impugned order passed by the first Appellate Court shows that the appellate Court has considered that there are in all 20 applicants, who were the original defendants and none of them found time to apply for certified copy immediately after the suit was decreed or to prefer an appeal within time.

6] The appellate Court has also considered that the other grounds given for condonation of delay, are vague and general and not at all sufficient within the ambit of section 5 of the Limitation Act. In this respect the Appellate Court has rightly placed reliance on the **State Bank of India -vs- Shri.Laxmikant Vithal Palekar and ors [2010 (4) All MR 844]**; wherein it was clearly observed that the condonation of delay cannot be granted for mere asking. There has to be sufficient cause to condone the delay. Though the expression

“sufficient cause” is liberally construed and is elastic enough to enable the Court to apply the law in a meaningful manner, while condoning the delay what matters is not the length of the period but the acceptability of the explanation offered to condone the delay.

7] Here in the case the explanation offered is not only of a very vague and general nature, but considering the fact that the appellants did not get time even to apply for certified copy or to file appeal within the time and that too on vague ground that they were busy in agricultural operations and on account of personal difficulties, is itself sufficient to rule out such explanation. The suit is of the year 1997. It is for removal of encroachment and in such a case the appellants should have been more careful and diligent which they have not been. Merely stating that they were busy in agricultural operations and the delay is only of 34 days cannot be a ground, if the explanation offered is not sufficient. Even if liberal view is taken, in such case it is not justified having regard to the facts.

8] Hence, in the Second Appeal, no interference is called for, as the view taken by the Appellate Court is just, legal and correct.

9] No substantial question of law is raised in the Second Appeal. The Second Appeal, therefore, stands dismissed.

10] At this stage, learned counsel for appellant seeks stay of four weeks to the execution and implementation of the order.

However, in my considered opinion, no such stay can be granted particularly considering the fact that this appeal is also filed with application for condonation of delay and hence this request is rejected.

11] In view of dismissal of Second Appeal, Civil Application No.1953 of 2016 becomes infructuous and the same is accordingly disposed off.

[DR.SHALINI PHANSALKAR-JOSHI, J.]