

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

**CIVIL APPLICATION NO. 376 OF 2014
IN
SECOND APPEAL ST. NO. 1755 OF 2009**

Shri Nandu Madhukar Chiplunkar & Anr. ...Applicants/
Appellants

Versus

Shri Ajit Madhukar Chiplunkar & Ors. ...Respondents

.....
Mr. Tushar Sonawane for the Applicants/Appellants.
Mr. Ganesh Gokhale for the Respondents.
.....

**CORAM: MRS.MRIDULA BHATKAR, J.
DATED: APRIL 06, 2018**

P.C. :

1. This Civil Application is moved for condonation of delay in filing the Second Appeal.
2. The learned Counsel for the applicants submitted that there is a delay of 493 days in filing the Second Appeal. He submitted that Civil Appeal No. 182 of 2005 was decided on 28th August, 2007. The appellants after loosing the First Appeal wanted to file Second Appeal. He further submitted that the appellants could not take steps to file Second Appeal due to financial difficulty.

Appellant no.1 is a painter and appellant no.2 was helping appellant no.1 in work. Hence, their income is meager and, therefore, due to financial crunches, they could not file Second Appeal. In support of his submissions, he relied on the judgment of the Supreme Court in the case of ***N. Balakrishnan Vs. M. Krishnamurthy*** reported in ***(1998) 7 SCC 123***.

3. The learned Counsel for the respondents while opposing this Civil Application, submitted to the orders of this Court.

4. Heard submissions. Perused Civil Application. Under Section 5 of the Limitation Act, the Court can use the discretion while examining the explanation disclosing the sufficient cause for delay. In the present case, the applicants have lost the suit before the Trial Court and thereafter, they have filed the First Appeal, which was decided against them. Against the said order, the applicants have filed this Second Appeal. As per the submissions of the learned counsel for the applicants, the applicants are doing the work of painting, having limited income and, therefore, they could not file Second Appeal within time. For filing the Second Appeal, they have required to spend money for seeking legal

assistance. In the case of ***N. Balakrishnan*** (*supra*), the Supreme Court has observed that condonation of delay is a matter of discretion of the Court. Section 5 of the Limitation Act does not say that such discretion can be exercised only if the delay is within a certain limit. Length of delay is no matter, acceptability of the explanation is the only criterion. In view of the above judgment, the delay of 493 days is hereby condoned. Second Appeal is restored to its original file.

5. Civil Application is allowed and is accordingly disposed of.

(MRIDULA BHATKAR, J.)