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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

BENCH AT AURANGABAD

903 CIVIL APPLICATION NO.2189 OF 2013
IN SAST/2839/2013

SHARAD TRIMBAK KULKARNI
VERSUS
SHRINIWAS SHARAD KULKARNI AND OTHERS

...

Advocate for Applicant : Shri A.D. Sonkawade h/f Shri
Shinde Abasaheb D.

Advocate for Respondent nos.1 & 3 : Shri K.B. Autade
Respondent no.2 served.

CORAM: V.L. ACHLIYA, J.

DATE: 02.08.2019

PER COURT :

1] This application is filed seeking condonation of
delay of 422 days in filing second appeal.

2] Heard learned counsel appearing for the
applicant and respondents.

3] In brief, it is the contention of learned
counsel for the applicant / appellant that the delay
caused in filing appeal occurred mainly due to old age
and illness of the applicant. It is submitted that at
the time of filing the application, the applicant was 73
years old and suffering from various ailments. The suit

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is filed by his son seeking partition and separate possession. The execution of decree would result into serious consequences and at this old age, as the applicant would be required to vacate the residential premises. It is submitted that there are conflicting decisions rendered by the Courts below.

4] On the other hand, learned counsel appearing for the respondents opposed the application with contention that the cause assigned is not sufficient to condone the delay. It is submitted that the reasons assigned for condonation of delay are false and concocted.

5] On due consideration of the submissions advanced and the overall facts of the case, I am of the view that the delay deserves to be condoned in the light of broad principles laid down by the Apex Court in the case of *Esha Bhattacharjee v. Managing Committee of Raghunathpur Nafar Academy and others* [(2013) 12 SCC 649]. In case delay is condoned, no serious prejudice would be caused to the applicant. On the contrary, if delay is not condoned, there is every likelihood that a meritorious matter may be rejected for technical reason. I am, therefore, inclined to allow the application.

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6] Accordingly, the civil application is allowed in terms of prayer clause [B]. Delay condoned. Appeal be registered.

7] After removal of office objections and registration of appeal, the appeal be listed for admission on 3.9.2019.

8] Shri K.B. Autade Advocate waives service of notice for respondent nos.1 & 3.

(V.L. ACHLIYA, J.)