

IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
BENCH AT AURANGABAD

931 CIVIL APPLICATION NO.1618 OF 2016  
IN SAST/3392/2016

VAIBHAV DATTATRAY SHINDE  
VERSUS  
THE STATE OF MAHARASHTRA AND ORS

...

Advocate for Applicant : Mr. S. S. Bhise holding for Mr. A. R. Barate  
AGP for Respondents No.1 and 2 -State: Mr. S. M. Ganachari  
Advocate for respondents No.3 and 4 : Mr. S. A. Patil  
Advocate for Respondent No.5 : Ms. Seema T. Pawar, holding for Mr. A.  
G. Talhar  
Advocate for respondent No. 6 : Mr. D. A. Madke

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**CORAM : SMT.VIBHA KANKANWADI, J.**  
**DATE : 20-03-2019.**

PER COURT :

1. Present application has been filed to get the delay of 115 days condoned in filing second appeal.
2. Heard learned advocate Mr. S. S. Bhise holding for Mr. A. R. Barate representing applicant, learned AGP Mr. S. M. Ganachari for respondents No.1 and 2 - State, Mr. S. A. Patil, advocate for respondents No.3 and 4, Mr. D. A. Madke, learned advocate for respondent No.6, learned advocate Ms. Seema Pawar holding for Mr. A. G. Talhar.
3. Respondent No.5 who was the original appellant before the First Appellate Court had filed the said Regular Civil Appeal No.139 of 2011 before District Judge -2, Osmanabad and it came to be allowed on 02-

07-2015, and the said Judgment and decree is under challenge in this second appeal appears to have no serious objections for the reason stated in para No.4 of the application.

4. In paragraphs No.2 and 3 of the application it is stated that, the learned advocate appearing for the applicant was absent at the time of hearing and it is stated that thereafter there was a communication gap between the advocate and the applicant due to which the delay has been caused. It appears to be the sufficient and reasonable ground to condone the delay. However, at the same time a fact is required to be noted that, on enquiry it was submitted by the applicant that, the applicant has not yet taken any action against the advocate who was representing him before the first Appellate Court. Though the learned advocate was engaged by the present applicant before the first Appellate Court, he remained absent. That means, he appears have not done his duty. Anyway for the negligence on the part of the advocate, the client should not suffer, and therefore, the application is allowed. Delay is condoned. Registry to verify the second appeal and number the same. It be placed for consideration on 12-04-2019.

**(SMT. VIBHA KANKANWADI)**  
**JUDGE**

*vjg/-.*