

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

935 CIVIL APPLICATION NO.10335 OF 2019
IN SAST/5437/2019 WITH CA/10337/2019 IN SAST/5437/2019

SOPAN PANDURANG KATORE AND ANOTHER
VERSUS
SHIVAJI DAGDU MISAL AND OTHERS

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Advocate for Applicants : Ms. M.A. Kulkarni
Advocate for Respondents No.1,2 and 4 : Mr. Yogesh Kale h/f
Mr. R.R. Karpe

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CORAM : V.L. ACHLIYA, J.

DATED : 29th NOVEMBER, 2019

PER COURT:-

1. This application is filed for condonation of 97 days delay in filing the appeal for the reasons set out in detail in the application.

2. Heard the learned counsel for the applicants – appellants and the counsel representing respondents.

3. In brief, it is the contention of the learned counsel for the applicants - appellants that the delay caused in filing the appeal was not intentional and deliberate but caused due to non availability of the certified copies. The applicant got knowledge of decree on 09.09.2018. Immediately, thereafter the applicant moved an application for certified copy on 10.09.2018. After securing the copy of judgment and decree of first appellate court,

the applicant approached the advocate. He was asked to bring the certified copy of judgment and order passed by the trial Court. In collecting the documents, considerable time was spent, due to this reason, the delay has been caused in filing the appeal.

4. Learned counsel for respondents opposed the application with contention that the reasons assigned for condonation of delay are false and concocted and the same cannot be treated as sufficient to condone the delay.

5. On due consideration of submissions advanced in the light of unchallenged and uncontroverted pleadings made in the application seeking condonation of delay, I am of the view the cause assigned for condonation of delay can be accepted as good cause for condonation of delay. Keeping in the the mind the broad principles laid down by the Apex Court in the case of ***Esha Bhattacharjee v. Managing Committee of Rahunathpur Nafar Academy & others*** reported in ***(2013) 12 SCC 649***, in dealing with application seeking condonation of delay, I am of the view that delay deserves to be condoned. In case, delay is condoned no serious prejudice would cause to the respondents, as ultimately the appeal will be decided on merits. I am therefore, inclined to allow the application subject to costs of Rs.10,000/- to be payable by the applicant to Government Cancer Hospital at Aurangabad. The costs be paid within four weeks from today. On

deposit/payment of costs, the appeal be registered. Failure to pay/deposit the costs, the order condoning the delay stands recalled.

6. Civil application is disposed of in above terms.

(V.L. ACHLIYA)
JUDGE

SPR