

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

967 CIVIL APPLICATION NO.11558 OF 2018
IN SAST/6750/2018 WITH CA/11559/2018 IN SAST/6750/2018

KALAWATI @ KADUBAI SHRIRANG TULJAPURE
VERSUS
KAVERIBAI KESHAV YADAV AND OTHERS

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Mr. S.A. Wakure, Advocate for the applicant
Mr. P.S. Chavan, Advocate for the respondent Nos.1 and 2

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CORAM : SMT. VIBHA KANKANWADI,J.

DATE : 18th JANUARY, 2019

PER COURT :

1 Present application filed for getting delay of 421 days condoned which has been caused in filing the Second appeal. Present applicant is the original defendant No.1 and present respondent Nos.1 and 2 are the original plaintiffs. They had filed R.C.S. No.59/2000 before 3rd Jt. Civil Judge Junior Division, Osmanabad for partition, separate possession and declaration that the sale deed dated 08.10.1990 is null and void and not binding on their rights. The said suit came to be decreed on 31.03.2015. Thereafter, the said decree was challenged before learned District Judge-3, Osmanabad in R.C.A. No.84/2015. The said appeal came

to be dismissed on 16.10.2016. The applicant intends to challenge the said Judgment and Decree. As regards explanation of delay is concerned, she says that due to the old age she is suffering from illness. The properties are situated at different place and she is residing at a different place. She could not come to know about the decision in her appeal. She is illiterate and therefore had no idea that she is required to challenge the decree in Second Appeal. She is also a lady and therefore, also for collecting necessary financial support she has filed the Second Appeal, but with delay. On these grounds, she prayed for the delay to be condoned.

2 Respondent Nos.1 and 2 have orally objected the application stating that no reasonable ground has been shown explaining each and every days delay. The respondent Nos.1 and 2 are equally illiterate and old.

3 It is pertinent to note that all the ladies are senior citizens, thereafter, the appellant is 75 years old lady. It appears that the suit property is situated at village Kaudgaon, Tq. & Dist. Osmanabad, whereas she resides at Bhanasgaon, Tq. & Dist. Osmanabad. All the three ladies appeared to be illiterate and therefore, liberal approach is required

to be taken. Hence, the following order.

ORDER

1 The application is allowed.

2 The delay is condoned subject to deposit of costs of Rs.4,000/-, to be deposited within 15 days from the date of this order.

3 After depositing the said amount, it be distributed to respondent Nos.1 and 2, equally.

4 After the amount is deposited, registry to verify and register the Second Appeal and place the said appeal for consideration on 22.02.2019.

(Smt. Vibha Kankanwadi, J.)

agd