

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

CIVIL APPLICATION NO.4047 OF 2017
IN
SAST/6831/2017

INDUMATI RAMCHANDRA JADHAV AND ANOTHER
VERSUS
ANWAR CHANDSAHEB SHAIKH

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Advocate for Applicants : Mr A N Sabnis h/f V D Gunale

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CORAM : SMT. VIBHA KANKANWADI, J.
Dated: March 15, 2019

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PER COURT :-

1. Heard learned advocate Mr. Sabnis holding for Mr. V D Gunale for the applicants. None for the respondent.

2. Present application has been filed for getting the delay of 42 days condoned in filing the second appeal.

3. The applicants have come with a case that they intend to file the second appeal challenging the judgment and decree dated 31.7.2013 in Special Civil Suit No.231/2008 passed by the learned 3rd Jt. Civil

Judge S.D., Latur and the judgment and decree dated 18.10.2016 passed by the learned Adhoc District Judge-1, Latur in RCA No.214/2013. The suit that was filed against the present applicants was for specific performance of contract. The said suit had proceeded ex-parte against the present applicants/appellants. They had challenged the judgment and decree passed by the trial court in the appeal with a prayer to remand the matter. However, the appellate Court refused to exercise the power under Order 41 Rule 23(A) of the Civil Procedure Code. It was also contended that the applicant no.2 was the bonafide purchaser for value without notice. Now, they wanted to challenge the judgment and decree of first appellate Court, however, there is delay. Said delay has been caused due to financial crises as the applicants could not arrange for the funds.

4. Taking into consideration the fact that the applicant no.1 is Indumati is from a rural background and it appears that she is agriculturist and having the

house hold occupation so also she was the appellant before the first appellate court, there appears to be some substance in the say of the applicants that due to financial crises she could not arrange for the funds. However, as regards applicant no.2 is concerned, it is stated that he is business man, but taking into consideration his age, also some leniency is required to be shown. Further, when the property rights are involved and the applicant no.2 is coming with a case that he is a bonafide purchaser for value without notice, at least case is made out to condone the delay. Hence, application is allowed. Delay is condoned. Application stands disposed of.

5. Registry to verify and register the second appeal and place the same for consideration on 11.4.2019.

(SMT. VIBHA KANKANWADI, J.)

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