

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

916 CIVIL APPLICATION NO.7572 OF 2014
IN SAST/13511/2014

GOWARDHAN UKHARDU SONAWANE DIED LRS SOMA AND OTHERS
VERSUS
DIGAMBAR GIRDHAR SONAWANE AND OTHERS

...

Mr. P.N. Kutti, Advocate for the applicants
Mr. L.V. Sangeet, Advocate for the respondent No.1

...

CORAM : SMT. VIBHA KANKANWADI,J.

DATE : 12th FEBRUARY, 2019

PER COURT :

1 Present application has been filed for getting the delay of 86 days condoned in preferring Second Appeal.

2 Present applicants are the original defendants. Present respondent No.1 was the plaintiff. He had filed suit for recovery of amount before 3rd Joint Civil Judge Senior Division, Jalgaon. It came to be partly decreed on 29.11.2006. Original plaintiff preferred Regular Civil Appeal No.55/2007 before learned District Judge-4, Jalgaon. The said appeal came to be allowed and the suit came to be decreed on 08.10.2013. Now, the appellants-applicants intend to challenge the said Judgment and Decree,

however, there is delay. The applicants have contended that they are residing in small village, where communication facilities are not properly available. They could not contact the Advocate in time. The delay is unintentional.

3 Affidavit-in-reply has been filed by respondent No.1. It is stated that village Fufani is near to Jalgaon and Post Office is available at Amoda. There is telephone facility as well as mobile facility available in their village and therefore, there is no substance in the say of the applicants that there is no communication facility available at the village.

4 Heard both sides. Both the learned Advocates have argued in support of their respective contentions. First and the foremost fact, that is required to be considered is that, there is delay of 86 days. It is not in dispute that the applicants are residing at village Fufani. Original defendant appears to have expired during the pendency of the appeal and therefore his legal representatives i.e. present applicants were brought on record. Applicant No.3 is a senior citizen. Taking into consideration the fact that the applicants are coming from rural background, though the respondent No.1 is trying to contend that there is telephone facility as well as mobile facility available, the communication with the Advocate before taking steps to file Second

Appeal was important. Under such circumstance, liberal approach is required to be taken. Hence, following order.

ORDER

1 Application is hereby allowed.

2 The delay caused in filing Second Appeal is hereby condoned.

3 Registry to verify and register the Second Appeal and place the same for consideration on 19.03.2019.

(Smt. Vibha Kankanwadi, J.)

agd