

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

4 CIVIL APPLICATION NO.9221 OF 2018
IN SAST/14095/2018

Sayyad Iqbal s/o Sayyad Ismail Ustad,
Age 48 years, occupation Business,
R/o Juna gunj, Gadi Lane, Udgir
Tq. Udgir Dist. Latur. ...Applicant.

VERSUS

Audumbar s/o Rangnath Kotalwar, (Died)
Through Legal Heirs.
1/1 Prabhavati wd/o. Audumbar Kotalwar,
Age 72 years, occupation Household,
R/o Juna Gunj, Gadi Lane, Udgir
Tq. Udgir Dist. Latur.
And Other (11). ...Respondents.

...

Advocate for Applicant : Mr. Thorat Chandrakant R.
Advocate for Respondents No. 1/2(1) To 1/2(5) & 3 : Mr. Syed G. R.

...

CORAM : SMT.VIBHA KANKANWADI, J.
DATE : 04-01-2019.

ORAL ORDER :

1. Present application has been filed for condoning delay of 59 days in preferring second appeal.
2. The applicant is the original plaintiff who had filed Special Civil Suit No. 34 of 2010 (old Special Civil Suit No.41 of 2005) for specific performance of the contract. Suit came to be dismissed on 27-09-2010. He had preferred Regular Civil Appeal No. 17 of 2012 before

District Judge-2 Udgir, which came to be dismissed on 13-11-2017. He intends to challenge the Judgment and decree, however there is delay of 59 days.

3. The applicant contends that, he is in possession of the suit property and running small business in the portion. He himself was not feeling well and was unable to travel from Udgir to Aurangabad, therefore the delay has been caused. The delay is unintentional. His vital rights are involved, and therefore he has prayed for condonation of delay.

4. Affidavit-in-reply has been filed by the respondents wherein it has been contended that the applicant has not explained the delay properly, no sufficient cause has been shown, and therefore the application deserves to be rejected.

5. Heard Mr. C. R. Thorat, learned advocate appearing for applicant/appellant, Mr. G. R. Syed, learned advocate appearing for respondents. Perused the record.

6. It is to be noted that, the suit was for specific performance. Under such circumstance definitely it can be presumed that, there would be some rights which would be canvassed by both the sides. No doubt there is concurrent finding of two courts, but the applicant claims that he is in possession of the suit property. He has stated that, he was not feeling well and was unable to travel. Taking into consideration the

delay of only 59 days liberal approach is required to be adopted, and therefore, the delay deserves to be condoned. Hence following order.

ORDER

- 1) Application is allowed.
- 2) The Delay caused in filing second appeal is hereby condoned.
- 3) Registry to verify and register the second appeal and be put for admission on 28-01-2019.

(SMT. VIBHA KANKANWADI)
JUDGE

vjg/-.