

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

29 CIVIL APPLICATION NO.7205 OF 2019
IN
SECOND APPEAL STAMP NO.14258 OF 2019

GAJANAN CHANGDEV MUNDLIK
VERSUS
CHANGDEV SHANKARRAO MUNDLIK
DECEASED THROUGH LRS
VIJAYA CHANGDEV MUNDLIK & OTHERS

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Advocate for Applicant : Mr.Y.V.Kakade
Advocate for Respondent nos.1A to 1D :
Mr.R.S.Devdhe.

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CORAM : V.L.ACHLIYA, J.
DATE : 05.08.2019

PER COURT:

1] The applicant-appellant has filed this Civil Application seeking condonation of delay of 128 days in filing the Second Appeal.

2] Heard the learned counsel for the applicant-appellant and the respondents.

3] In brief, it is the contention of the applicant-appellant that the delay caused in filing the Appeal was not intentional and

deliberate. It is submitted that during pendency of the Appeal, the respondent filed another suit for partition and separate possession of the property, including the property, which is subject matter of proceeding carried in appeal. The said suit was partly allowed in terms of compromise. The said compromise was challenged by the respondent by filing Appeal before First Appeal Court, which was decided on 05.02.2019. In view of compromise between the parties, the delay has been caused in filing present Appeal.

4] On the other hand, learned counsel for the respondents has opposed the application with contention that the reasons assigned for condonation of delay are false and concocted. It is submitted that no cause has been assigned which can be treated as sufficient cause for condonation of delay.

5] On due consideration of the submissions advanced, I am of the view that the delay deserves to be condoned. It is well position of law that while dealing with the application seeking condonation of delay, the Court should not adopt hyper-technical approach. The Court is expected to adopt pragmatic and justice-oriented approach while dealing with an application seeking condonation of delay. In the event delay is condoned, no serious prejudice would be caused to the respondents. On the contrary, delay is not condoned, there is every likelihood that a meritorious matter may be rejected for technical ground. The prejudice cause to the respondents can be compensated in terms of money. I am, therefore, inclined to allow the Application.

6] Accordingly, the Application is allowed in terms of prayer clause 'B' subject to payment of cost of Rs.3,000/- to be

payable by the applicant to the respondents within two weeks.

7] Appeal be registered and placed for admission on 21st August, 2019 along with Second Appeal No.338 of 2019.

[V.L.ACHLIYA]
JUDGE

DDC