

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

BENCH AT AURANGABAD

920 CIVIL APPLICATION NO.7473 OF 2018
IN SAST/15107/2018

NAGNATH BALI SIDDHAGANESH AND ANOTHER
VERSUS
DADARAO APPARAO THOMBRE
...

Advocate for Applicants : Shri Kedar Balbhim R.
Advocate for Respondent nos.1A to 1D : Shri K.J.
Suryawanshi

CORAM: V.L. ACHLIYA, J.

DATE: 09.08.2019

PER COURT :

1] The applicants have moved this application seeking condonation of 156 days delay in filing appeal for the reasons set out in detail in the application.

2] Heard learned counsel for the applicants and the respondents.

3] In brief, it is the contention of learned counsel for the applicants that the delay caused in filing appeal was not deliberate and intentional, but occurred due to the reason that the son of the applicant

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no.2 as well as applicant no.1 were not keeping well. So also due to poor financial condition, the applicants could not raise funds to file appeal within time. It is submitted that in case delay is condoned, no prejudice would be caused to other side. On the contrary, if delay is not condoned, there is likelihood that a meritorious matter may be rejected for technical reason.

4] On the other hand, learned counsel for the respondents opposed the application with contention that the cause assigned for condonation of delay in appeal cannot be treated as sufficient cause to condone the delay. It is submitted that the reasons assigned for condonation of delay are false and concocted. It is further submitted that the applicants have no case to succeed in appeal and the appeal is filed just to protract the delivery of possession of the suit property.

5] On due consideration of the submissions advanced in the light of cause assigned for condonation of delay and the documents relied in support of facts pleaded in the application, I am of the view that the delay deserves to be condoned.

6] Perusal of the documents produced on record in

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support of the cause assigned to condone the delay reflect that the son of the applicant no.2 namely Nagesh was suffering from cancer and undergoing treatment in the hospital at Pune. He died on 12.2.1018. Thus, in view of the cause assigned for condonation of delay, which remained unchallenged and un-controverted and supported with documents, I am of the view that the delay caused in filing appeal deserves to be condoned. In case delay is condoned, no serious prejudice would be caused to the respondents as the case will be decided on its own merits. Thus, keeping in mind broad principles laid down by the Apex Court in the case of *Esha Bhattacharjee V/s Managing Committee of Raghunathpur Nafar Academy and others* reported in (2013)12 S.C.C. 649 in the matter of condonation of delay, I am of the view that the delay deserves to be condoned. Accordingly, the application is allowed in terms of prayer clause [B]. Delay is condoned. Appeal be registered and placed for admission on 26.9.2019 after removal of office objections.

7] Shri K.J. Suryawanshi Advocate waives service of notice before admission in the appeal on behalf of respondent nos.1A to 1D.

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8] Parties to maintain *status quo* in respect of the
suit property till 26.9.2019.

9] List the appeal for admission on 26.9.2019.

(V.L. ACHLIYA, J.)