

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

920 CIVIL APPLICATION NO.6103 OF 2018
IN SAST/16455/2017 WITH CA/6104/2018 IN SAST/16455/2017

AMAR DATTATRAY PATIL AND OTHERS

VERSUS

PRASAD GANPATRAO PATIL LRS VANDANA AND OTHERS

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Mr. S.S. Choudhary & Mr. Kuldeep Patil, Advocates for the applicants

Mr. R.P. Bhumkar, Advocate for the respondent Nos.1a to 1c

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CORAM : SMT. VIBHA KANKANWADI,J.

DATE : 08th JANUARY, 2019

ORAL ORDER :

1 Heard both sides. Present application has been filed for condonation the delay caused in filing Second Appeal.

2 The applicants are the original defendant No.11, legal representatives of original defendant No.7, 8 and original defendant No.10 respectively. Respondent No.1A to 1C are the legal representatives of original plaintiff. Original plaintiff had filed suit for partition and separate possession bearing R.C.S. No.262/2006. It came to be decreed by 2nd Joint

Civil Judge Senior Division, Osmanabad on 31.10.2014. Thereafter, some of the defendants had filed appeal bearing R.C.A. No.216/2014 and it came to be dismissed by learned District Judge-2, Osmanabad. The applicants intend to challenge these two Judgments and Decrees. The applicants have contended that initially they had sought legal opinion as to they should prefer Second Appeal or not. Thereafter, they had to collect the money, when a positive opinion was given. They are from rural area and therefore, the delay has been caused. The delay is unintentional and therefore, they have prayed for condoning the same.

3 The application has been objected by non applicant Nos.1A to 1C on the ground that no reason has been given explaining the delay. The delay is inordinate and intentional. The Courts below have considered the case of plaintiffs on merits and come to the right conclusion.

4 It is to be noted that parties are admittedly from Osmanabad. They say that the time was consumed in seeking legal opinion and collection of money to prosecute the Second Appeal. Taking liberal approach, the application deserves to be allowed, however, at the same time the respondent Nos.1A to 1C are required to be compensated

in terms of money. Hence, following order.

ORDER

1 Application is hereby allowed.

2 The delay caused in preferring Second Appeal is hereby condoned, subject to deposit of costs of Rs.9,000/- within 15 days from the date of this order.

3 Upon the deposit of said amount, it be distributed to applicant Nos.1A, 1B and 1C equally.

4 After the deposit of amount, Registry to verify and register the appeal and it be placed for consideration on 08.02.2019.

(Smt. Vibha Kankanwadi, J.)

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