

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

**CIVIL APPLICATION NO.8525 OF 2018
IN SAST/18120/2018**

Baban @ Sakharam Namdev Raut

...Versus...

Sambhaji Namdev Raut & Ors.

...

Mr. B.S. Chondhekar, Advocate for the applicant

Mr. A.L. Kanade, Advocate for the respondent Nos.1, 3 to 6

...

CORAM : SMT. VIBHA KANKANWADI, J.

RESERVED ON : 11th JANUARY, 2019

PRONOUNCED ON : 29th JANUARY 2019

PER COURT :

1 Present application has been filed to get the delay of 659 days condoned in filing Second Appeal.

2 Present applicant is original defendant No.2. Respondent No.1 is the original plaintiff. Original plaintiff had filed suit for partition and separate possession i.e. Regular Civil Suit No.86/2012 before Civil Judge Junior Division, Sengaoon, Dist. Hingoli. It is not in dispute that defendant

No.2 was served with summons and he appeared through Advocate, however, he did not file the written statement within limitation and therefore, order was passed that, “suit to proceed without written statement” against him. Other defendants had also not filed the written statement and therefore, a separate order appears to have been passed for proceeding matter without written statement against them also. Thereafter, after taking the evidence the suit came to be allowed. It was declared that plaintiff has 1/6th share in the property described in Schedule A and B.

3 Defendant No.2 has filed Civil Miscellaneous Application No.43/2014 before learned District Judge-2, Hingoli for condonation of delay to file appeal. It was stated that there is delay of about 12 months and 18 days in preferring the first appeal. After hearing both parties the said application came to be rejected. Now, the defendant No.2-present applicant intends to challenge the said order by way of this Second Appeal, however, there is delay of 659 days. The applicant contends that there was communication gap between him and the Advocate. He is a senior citizen and illiterate person. He was unaware about the period of limitation. In fact, substantial rights regarding the immovable properties

are involved in the Second Appeal. The delay is unintentional and therefore he prayed for condoning the said delay.

4 Heard learned Advocate Mr. B.S. Chondhekar for applicant and learned Advocate Mr. A.L. Kanade for respondent Nos.1, 3 to 6. Both of them have argued in support of their respective contentions.

5 It appears that initially also for preferring First Appeal there is delay of more than 12 months and now also there is delay of 659 days. At least, when the first attempt to get the delay condoned was not successful, it was expected that the applicant should be diligent enough, however, it is to be noted that the applicant is 63 years old person. It can also be seen that he is illiterate, coming from a rural background. Under such circumstance, liberal approach is required to be adopted. As regards the merits of the case are concerned, it would be considered at the relevant time, however, the inconvenience that would be caused to respondent No.1-original plaintiff, who is also now 67 years old person, is required to be compensated in terms of money. Hence, following order.

ORDER

1 Application is hereby allowed.

2 The delay caused in filing Second Appeal is hereby condoned, subject to deposit of costs of Rs.5,000/-, within 15 days from the date of this order.

3 After the amount is deposited, it be disbursed to respondent No.1 only.

4 Registry to verify and number the Second Appeal and it be put for consideration on 22.02.2019.

(Smt. Vibha Kankanwadi, J.)

agd