

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

966 CIVIL APPLICATION NO.11471 OF 2018
IN SAST/18742/2018

SHRIRAM BAPURAO KURHE AND OTHERS
VERSUS
TULSABAI GYANBA SHINDE

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Mr. K.S. Patil, Advocate h/f Mr. S.S. Choudhary, Advocate for the applicants
Mr. A.S. Deshmukh, Advocate for the sole respondent

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CORAM : SMT. VIBHA KANKANWADI,J.

DATE : 18th JANUARY, 2019

ORAL ORDER :

1 Present application has been filed for getting the delay of 1231 days condoned in filing Second Appeal.

2 Applicants are the original defendants. Non applicant is the original plaintiff No.2. Plaintiffs had filed suit for partition and separation possession and the same came to be partly allowed. The suit was dismissed as against plaintiff No.1 and share was given to plaintiff No.2 only in the suit property. The original defendants preferred Regular Civil Appeal No.19/2012. It came to be allowed and the cross objections of the respondents were dismissed by learned District Judge-1, Gangakhed on 20.11.2014. It is contended that Second Appeal No.60/2016 was preferred

by present non applicants challenging the Judgment and Decree of the First Appeal. The said was heard by this Court on 02.04.2018. In fact, in that case notices were issued to the present applicants on 03.02.2016. They were served on the applicants in March, 2016. They had appeared through Advocate on 21.03.2016 and thereafter it is adjourned from time to time. However, it was heard on 02.04.2018. The Point Nos.1 and 2 were given against the present applicants by the learned First Appellate Court and they intend to challenge those findings and therefore they want to file the Second Appeal, however, there is delay. It is stated that the delay is not at all intentional, but it is purely accidental.

3 The application has been orally objected on the ground that absolutely no reason has been given for condoning the delay. The present applicants had knowledge about Second Appeal filed by the present non applicant and they had appeared in the matter way back on 21.03.2016. Merely because when this Court while hearing the parties on 02.04.2016 expressed that no appeal is filed by the applicants, it appears that they have made preparation to challenge the said findings. When absolutely no reason has been given, no case is made out to condone the delay.

4 Heard learned Advocate Mr. Kuldeep S. Patil holding for Mr. S.S. Choudhary, Advocate for the applicants and learned Advocate Mr. A.S. Deshmukh appearing for the non applicant. Both the learned Advocates have argued in support of their respective contentions.

5 The first and foremost fact that is required to be considered is that, the contents of the application do not disclose any reason much less, cogent to explain the said inordinate delay, when the present applicants had the knowledge about the Second Appeal preferred by the present non applicant, even they could have filed cross objections to challenge the findings against them. However, matter kept on adjourning for one or the other reason that does not estopped the applicants from filing the Second Appeal. When there are about 8 applicants, any one could have filed the appeal and no reason is given for the delay caused on account of any of the applicants. Under such circumstances, when no reason has been given at all, the application under Section 5 of the Limitation Act is not at all maintainable. Hence rejected.

(Smt. Vibha Kankanwadi, J.)

agd