

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

960 CIVIL APPLICATION NO.8896 OF 2018
IN SAST/19324/2018 WITH CA/8897/2018 IN SAST/19324/2018

VITHOBA TRIMBAK LOKHANDE AND OTHERS
VERSUS
CHANGUNABAI SADASHIV BHOMBE AND OTHERS

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Mr. S.V. Dixit, Advocate for the applicants

Mr. Govind Kulkarni, Advocate for the respondent Nos.1, 2, 4, 6 to 9

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CORAM : SMT. VIBHA KANKANWADI,J.

DATE : 18th JANUARY, 2019

PER COURT :

1 Heard both sides. Present application has been filed for condoning the delay of 237 days caused in filing Second Appeal. The applicants have contended that present respondent Nos.1 and 2 filed Regular Darkhast No.6/2010 for the execution of Judgment and Decree dated 10.07.2006 passed in Regular Civil Suit No.3/2004. The said suit was filed for partition and separate possession. It was decreed. It was held that the plaintiffs are entitled to get 1/9th share in the suit properties i.e. agricultural land as well as house property. Thereafter, the present applicants had approached in Regular Civil Appeal No.198/2006 before District Judge, Jalna. During the pendency of the appeal respondent Nos.3,

4 and 6 entered into compromise. The said compromise was recorded before learned Ad-hoc District Judge, Jalna and compromise decree was passed on 17.07.2008. As per the said decree, the applicants were put in possession and they were enjoying the properties since then. However, thereafter the respondent Nos.1 and 2 filed the said execution petition. The present applicants objected the same on the ground that the decree of the Lower Court merged into the compromise decree and without considering the submissions it is stated that the executing Court sent the praecipe for execution of the partition of the landed property to the Collector. Applicants had challenged the said order passed by learned Civil Judge Senior Division, Jalna dated 01.03.2013 in R.C.A. No.106/2013. The said appeal came to be dismissed by learned District Judge-2, Jalna on 16.08.2017, thereby the compromise decree was set aside and costs of Rs.3,000/- each was imposed. It is stated that thereafter the applicants had filed application for issuance of certified copy on 26.02.2018 and they were delivered to them on 27.06.2018. The applicants were required to make financial arrangements to file Second Appeal because of the poor financial condition, due to the old age of applicant No.1, who was mainly looking after the litigation as well as

due to his illness they could not file the Second Appeal. The delay is not deliberate and intentional and therefore they prayed for condonation of same.

2 The respondent Nos.1 and 2 have orally objected the application. It has been submitted on behalf of them that no explanation has been given by the applicants regarding the delay that has been caused from 16.08.2017 till 22.06.2018. It is stated that whatever reason has been tried to be given is after they received the certified copies, when no explanation is given for the delay of prior period, the delay cannot be condoned.

3 It will not be out of place to mention here that two of the present applicants are senior citizens. It is stated that the applicant No.1 was looking after the litigation. At present he is 68 years of age. All the applicants are doing agricultural and labour work. They are coming from village Hiwrali, Tq. Jafrabad and therefore a liberal approach is required to be taken. Much has been said as to what could have been the fact of compromise decree to which, admittedly, respondent Nos.1 and 2 were not party and whether the action of learned District Judge-1 Jalna while dismissing the appeal in R.C.A. No.106/2013 was proper or not.

However, that can be considered at the time of admitting of Second Appeal and not in this application. Reasonable ground has been made out. However, inconvenience that would be caused to respondent Nos.1 and 2 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.4,000/- in this Court, within 15 days from the date of this order.

3 After the amount is deposited, it be disbursed equally, to respondent Nos.1 and 2 who are the contesting respondents.

4 After deposit of the amount, registry to verify the Second Appeal and register the same.

5 It be placed for consideration on 18.02.2019.

(Smt. Vibha Kankanwadi, J.)

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