

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

928 CIVIL APPLICATION NO.9323 OF 2018
IN SAST/19832/2018

LAXMAN KISHAN JADHAV
DIED THROUGH LRS SUMANBAI & OTHERS
VERSUS
MADHAV PRASHRAM GORE
DIED THROUGH LRS PARVATABAI DIED & OTHERS

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Advocate for Applicants : Ms.Smita S.
Kulkarni

Advocate for Respondent no.1C : Mr.S.S.Wakure

Advocate for respondent no.2 :

Mr.S.G.Chapalgaonkar

Advocate for respondent nos.3 to 5 :

Mr.Rupesh A.Jaiswal.

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CORAM : V.L.ACHLIYA,J.

DATE : 29.11.2019

PER COURT:

1] This Application is filed for condonation of 360 days delay in filing Appeal for the reason 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 the learned counsel for the applicants that delay caused in filing Appeal is not

deliberate and intentional. It is submitted that Appeal preferred by the respondents—original plaintiffs was transmitted to District Court, in view of enhancement in pecuniary jurisdiction. After transfer of Appeal to District Court, the applicant—respondent no.1 in First Appeal i.e. Laxman died. The fact of death of Laxman i.e. respondent no.1 could not be brought to the notice of the First Appellate Court. In absence of knowledge as to death of the respondent no.1, the First Appellate Court proceeded to decide Appeal and judgment and order has been passed; which is challenged in the present Appeal. In this background, learned counsel submits that delay caused in filing Appeal cannot be said to be inordinate delay. There is sufficient cause to condone delay.

4] Learned counsel for the respondents opposed the Application with contention that delay caused in filing Appeal has not been properly explained.

5] On due consideration of the submissions advanced in the light of unchallenge, uncontroverted pleadings made in

the application and the reasons assigned for condonation of delay, I am of the view that delay deserves to be condoned. In case delay is condoned, no serious prejudice would be caused to the respondents. Accordingly, Application is allowed in terms of prayer clause-B. Necessary amendment/substitution be carried out within one week from the date of this order.

6] Civil Application is disposed of in above terms.

7] Appeal be registered subject to removal of office objections and place the same for admission on 10th December, 2019.

8] Liberty to move Court before next date, in case any exigencies arose.

[V.L.ACHLIYA]
JUDGE

DDC