

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

8 CIVIL APPLICATION NO.10595 OF 2018
IN SAST/24489/2018

Suresh s/o Manik Patil,
Age 48 years, Occupation Agri.,
R/o Nandre, Post Talode Digar,
Tq. Chalisgaon Dist. Jalgaon.Applicant.

VERSUS

Nana s/o Manik Patil,
Age 60 years, Occupation Agri.,
R/o Nandre, Post Talode Digar,
Tq. Chalisgaon Dist. Jalgaon.Respondent.

...
Advocate for Applicant : Mr. Patil Ujwal Subhash
Advocate for Respondent : Mrs. Sangeet Minakshi L.
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CORAM : SMT.VIBHA KANKANWADI, J.

DATE : 04-01-2019.

ORAL ORDER :

1. Present application has been filed for condoning the delay caused in filing second appeal.
2. The present applicant is original defendant. Present respondent had filed Regular Civil Suit No.127 of 2005 which came to be decreed on 29-09-2011, by 2nd Joint Civil Judge, Junior Division, Chalisgaon. The present applicant preferred Regular Civil Appeal No. 189 of 2011, it came to be dismissed on 24-07-2017 by learned

District Judge – 2, Jalgaon. The applicant intends to file the second appeal challenging the said Judgment and decree, however there is delay of 296 days.

3. The applicant contends that, he resides at a remote place and could not contact his advocate. In the month of March 2018 when he contacted advocate, he came to know about the dismissal of the appeal, and thereafter, he has collected the documents. He was under the impression that, there would be vacation to the Court, and therefore, did not contact any advocate in the month of May 2018. He also says that, he is a poor farmer. Some days were required him to collect the amount and engage advocate. The delay is unintentional. On these grounds he prays for delay to be condoned.

4. The respondent has filed affidavit-in-reply objecting the application. It is stated that, the mobile facility is available in his village. Both the parties are having mobile facility and he could have contacted his advocate. It is also stated that, no proper reasons have been given to condone the huge and inordinate delay.

5. Heard learned advocate for Applicant Mr. Patil Ujwal Subhash and learned advocate for Respondent Mrs. Sangeet Minakshi L. Perused the documents. The fact is not in dispute that the both the parties are agriculturists and they are residing at village Nandre Tq. Chalisgaon Dist. Jalgaon. They are the real brothers. It is also

stated by the respondent that, he as well as the applicant are having mobile facility. Even if that fact is also considered yet the applicant was not able to contact his advocate, is a fact stated by him. He has not stated as to whether his advocate had conveyed the decision to him or not. There was reciprocal duty on the advocate representing the present applicant before the first appellant Court to inform the applicant about the decision. Under such circumstance taking a liberal approach, the delay deserves to be condoned. However at the same time, the inconvenience that has been caused to the respondent deserves to be compensated in terms of money. Hence, the following order.

ORDER

- 1) Application is hereby allowed.
- 2) The delay caused in filing second appeal is hereby condoned subject to deposit of cost of Rs.5,000/- (five thousand) in this Court within one (01) week.
- 3) After the deposit of the amount, the same be disbursed to the respondent, thereafter Registry to verify and register the second appeal.

**(SMT. VIBHA KANKANWADI)
JUDGE**

vjg/-.