

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

934 CIVIL APPLICATION NO.9812 OF 2019
IN SAST/24859/2019

BINDUBAI LALCHAND RAUT AND ANOTHER
VERSUS
SHANTABAI SANDU RAUT AND OTHERS

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Advocate for Applicants : Mr. Devdatt P. Palodkar
Advocate for Respondents No.1 to 5 : Mr. T.M. Vanjane

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CORAM : V.L. ACHLIYA, J.

DATED : 29th NOVEMBER, 2019

PER COURT:-

. The applicants have moved this application seeking condonation of 90 days delay in filing Second Appeal for the reasons set out in detail in the application.

2. Heard the learned counsel for the applicants – appellants and the counsel representing the respondent nos. 1 to 5, the contesting respondents.

3. In brief, it is the contention of the learned counsel for the applicants - appellants that the delay caused in filing the appeal was not intentional and deliberate but caused due to reasons set out in detail in the application. It is submitted that the applicant no.1 was suffering from some health issue. She was advised to take rest. So also, the applicant no.2 could not take steps to file

appeal due to some family issues. The considerable time was spent in arranging the funds for presenting the appeal. It is submitted that, if delay is condoned no serious prejudice would cause to the respondents, as ultimately the appeal will be decided on merit.

4. On the other hand, the learned counsel for respondents no.1 to 5 submits that the cause assigned for condoning delay cannot be termed as sufficient to condone the delay.

5. On due consideration of submissions advanced in the light of reasons assigned in the application which remains unchallenged and uncontroverted, I am of the view that the delay deserves to be condoned. It is settled position in law that while dealing with the application seeking condonation of delay, the court must adopt liberal, pragmatic and justice oriented approach. In general, the court is expected not to take technical approach in dealing with the application seeking condonation of delay. Keeping in mind broad principles laid down by the Apex Court in the case of *Esha Bhattacharjee v. Managing Committee of Raghunathpur Nafar Academy & others* reported in *(2013) 12 SCC 649* , I am of the view in facts and circumstances of the case, the delay deserves to be condoned. In case, delay is not condoned, there is every likelihood that meritorious matter may be rejected for technical reasons. On the other hand, if

delay is condoned, no serious prejudice would be caused to the respondents as ultimately the matter would be decided on its own merits. I am, therefore, inclined to allow the application. Accordingly, the application is allowed in terms of prayer clause 'B'. Delay is condoned. Appeal be registered.

6. Civil application is disposed of in above terms.

(V.L. ACHLIYA)
JUDGE

SPR