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

**949 CIVIL APPLICATION NO.1212 OF 2019
IN FAST/26263/2018**

**SUBHASH SHESHRAO AMBHORE
VERSUS
THE STATE OF MAHARASHTRA AND ORS**

...

Advocate for Applicant : Mr. V.B. Jogdand Patil
AGP for Respondents : Mr. A.M. Phule

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**CORAM : P.R. BORA, J.
DATED : 22nd JANUARY, 2019.**

PER COURT:-

. Heard Shri Jogdand Patil, the learned counsel appearing for the applicant.

2. The delay of 3551 days has occurred in filing the present appeal by the appellant against the judgment and order passed in L.A.R. No.553/1998 decided by the District Judge-3 Jalna vide judgment and order passed on 08.09.2008. The learned counsel for the applicant submitted that the entire set of papers was handed over by the applicant to one counsel at Aurangabad on 15.07.2011 however, the said counsel did not file the appeal till 29.08.2018.

3. The learned counsel submitted that since the applicant is not at fault and the delay caused

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is unintentional, the applicant be given an opportunity to prosecute his appeal on merits by condoning the delay. I am, however, not convinced with the submissions so made by the learned counsel. I deem it appropriate to reproduce herein-below the contentions raised by the applicant in Para-5 to 8 of his application which read thus:

"5. The delay in filing appeal is not deliberate or intentional but due to reasons beyond the control of the applicant. The applicant is the villager and laymen. After the judgment and award of the Reference Court, he was intending prefer an appeal challenging the impugned judgment and order but he received the legal advice that in case of preference of appeal he will not get the amount awarded and hence he has not filed an appeal within limitation.

6. The enhanced amount awarded by the learned Reference Court was received to the applicant in April-2011. Immediately he decided to prefer appeal and collected necessary documents and had been at Aurangabad on 15/05/2011. He came to know that being holiday, the advocate is out of station. He went back and came on 08/06/2011. The advocate instructed him to get the office file of the Trial Court advocate and again he returned back to collect those documents.

7. By collecting all the relevant documents, the applicant had been at Aurangabad on 15/07/2011. The applicant is the rustic villager. Being agriculturist, he could not come immediately in the month of June and July-2011 as these are the rainy days and he has to lookafter for seeds, fertilizers

for sowing purpose.

8. The applicant also required time to make the financial arrangements to prefer an appeal and hence the delay is not deliberate or intentional but due to the reasons beyond the control of the applicant. The delay is caused due to wrong legal advice and due to the reasons as stated above."

4. Though the learned counsel for the applicant in his arguments submitted that the papers were handed over to one counsel but he did not prefer the appeal, in the entire application no such fact is averred by the applicant. If the reasons as are assigned by the applicant in Para 5 to 8 of his application which are reproduced herein-above are taken into account, the applicant has explained the delay only upto 15.07.2011 but has not provided in justification for the further period of about 7 years from 15.07.2011 to 29.08.2018. In absence of any explanation provided by the applicant for the aforesaid huge period of more than 7 years, the delay occasioned in filing the appeal by the applicant cannot be condoned. It is quite evident that the applicant was too negligent in prosecuting his matter. Hence the following order:

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ORDER

The application is rejected. Consequently,
First Appeal (Stamp) No.26263 of 2018 also stands
dismissed.

(P.R. BORA, J.)

Mujaheed//