

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

**6 CIVIL APPLICATION NO.13771 OF 2018
IN SAST/26754/2018**

BALIRAM SONAJI DHANGARE

VERSUS

LATABAI JANARDHAN LAHANE AND OTHERS

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Mr. A.S. Lomate, Advocate for the applicant

Mr. S.S. Thombre, Advocate for the respondent Nos.1 to 4

Mr. S.K. Mathpati, Advocate for the respondent No.5

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CORAM : SMT. VIBHA KANKANWADI,J.

DATE : 14th JANUARY, 2019

PER COURT :

1 Learned Advocate Mr. S.S. Thombre submits that he is appearing for respondent Nos.1 to 4. His Vakalatnama is taken on record.

2 Heard learned Advocate appearing for the applicant as well as respondents. Present application has been filed for condoning the delay of 153 days caused in filing Second Appeal. The applicant is the original plaintiff, who intends to challenge the Judgment and Decree passed by District Judge-1, Parbhani dated 01.01.2018 in Regular Civil Appeal

No.132/2014, which came to be allowed setting aside the Judgment and Decree passed by learned Jt. C.J.J.D., Jintoor in R.C.S. No.6/2010 dated 27.08.2013 which was decreed.

3 The applicant has contended that he has received the notice of caveat and therefore he met the Advocate, who then suggested him to file Second Appeal, thereafter, he made monetary arrangements and therefore there is delay.

4 While making submissions the learned Advocate for the applicant has stated that the applicant is now a retired person suffering from the heart ailments. He had no knowledge about the decision by the learned First Appellate Court, in fact, as he was ill, had given general Power of Attorney, who had looked after the appeal proceedings.

5 It is to be noted that whatever oral reasons are, in addition given, did not find any place in the pleadings, however, the fact will have to be considered that the present applicant is a retired Government servant. Initially his suit was decreed. Though it appears to be ex parte, however, in appeal, the appeal has been allowed setting aside the decree of the Lower Court and dismissing the suit. Under such circumstance,

liberal approach is required to be taken to condone the delay, however, inconvenience that is caused to the respondent is required to be compensated in terms of money. Hence, following order.

ORDER

1 The application is hereby allowed.

2 The delay caused in filing Second Appeal is hereby condoned, subject to deposit of costs of Rs.5,000/- in this Court, within a period of 15 days from today.

3 After the costs is deposited, it be disbursed to respondent Nos.1 to 5 equally.

4 After the costs is deposited Registry to verify and register the Second Appeal and the same be placed for consideration before this bench on 13.02.2019.

(Smt. Vibha Kankanwadi, J.)

agd