

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

21 CIVIL APPLICATION NO. 11749 OF 2018
IN
SAST/27478/2018

MAROTI RAMJI KENDRE
VERSUS
GOVIND MANIKA MUNDE AND OTHERS

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Mr. H.I.Pathan, Advocate for Applicant.
Mr. V.B.Dhage, Advocate for R – 1.
Mr. P.V.Ambade, Advocate for R – 4.

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CORAM : V.L.ACHLIYA, J.
DATE : 08/07/2019

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ORAL ORDER :

1. The applicant/appellant has moved this application for condonation of 183 days delay in filing Second Appeal.
2. Heard learned counsel for applicant/appellant and respondent Nos. 1 and 4. Other respondents though served, are absent.
3. In brief, it is the contention of learned counsel for applicant/appellant that the delay caused in filing appeal was not intentional and deliberate. The applicant came to know about passing of decree only after the notice of execution proceeding filed in the matter was served upon him. It is submitted that defendant No. 8 in the Suit, from whom the applicant has purchased land, has not informed about

filing of appeal and the orders passed therein. So also, defendant No. 8 in the Suit refused to give information. The applicant, therefore, engaged Advocate. After securing copies of Judgment and Orders passed by the trial Court as well as appellate Court, the applicant has filed appeal. It is submitted that no notice of the Suit as well as appeal personally served upon the applicant/appellant. Defendant No. 8 in the Suit caused appearance in both the Courts below for himself and on behalf of present applicant. Due to this reason, the delay was caused in filing appeal.

4. On the other hand, learned counsel for respondent No. 1 has resisted application by filing affidavit-in-reply. It is contended that the reasons assigned to condone the delay are false and concocted. The notices of Suit as well as appeal were duly served upon the applicant. Failure to appear in the matter, the case proceeded ex-parte against applicant before trial Court. In appeal also, the applicant has failed to appear. It is submitted that appeal filed is without merit.

5. On due consideration of the submissions advanced in the light of cause assigned for condonation of delay, I am of the view the delay deserves to be condoned. In case delay is not condoned, the meritorious matter may be rejected for

technical reasons. On the other hand, if delay is condoned the appeal will be heard on its own merit. Prejudice caused to the respondents can be compensated in terms of money. I am, therefore, inclined to allow the application seeking condonation of delay subject to cost of Rs. 10,000/- [Rupees Ten Thousand] to be payable by the applicant to respondent No. 1 i.e. original plaintiff. The cost shall be deposited within three weeks from the date of this order. On deposit of cost, the appeal be registered and place for admission subject to removal of office objections. In case cost is not deposited, the order of condonation of delay stands recalled and the application stands rejected. In the event, cost is deposited respondent No. 1 is permitted to withdraw the same.

6. The application stands disposed of in above terms.

[V.L.ACHLIYA]
JUDGE

KNP.