

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

3 CIVIL APPLICATION NO.13347 OF 2018
IN SAST/28009/2018

SANJAY KONDIBA KAWALE
VERSUS
KONDIBA VITTHOBA KAWALE (DEAD) AND OTHERS

...
Mr. M.S. Bhosale, Advocate for the applicant
...

CORAM : SMT. VIBHA KANKANWADI,J.

DATE : 18th FEBRUARY, 2019

PER COURT :

1 Respondent No.8 is stated to be served through her sister, who is respondent No.6. It appears that her own notice was served at the given address. Residential address of respondent No.8 is also same. Under such circumstance, it is not necessary that the Bailiff should again state that they are residing together. Service of respondent No.8 is taken as due service. Respondent No.1 is dead. It appears that the service is complete and therefore, Civil Application No.13347 of 2018 is ready for hearing. Nobody is appearing on behalf of them.

2 Heard learned Advocate appearing for the applicant. Present application has been filed for getting 33 days delay condoned, which has been caused in filing Second Appeal.

3 The applicant is the original plaintiff. He filed suit for partition and separate possession bearing R.C.S. No.47/2008 before Joint Civil Judge Junior Division, Pathri, Dist. Parbhani. The suit came to be dismissed on 05.02.2011. Thereafter, he challenged the said Judgment and Decree in R.C.A. No.28 of 2011 before the District Court, Parbhani. The said appeal has been heard by Extra Joint District Judge, Parbhani and it has been partly allowed on 23.04.2018. Now, the part of the decree which has been refused is to be challenged by the appellant in the Second Appeal, however, he says that there is delay of about 33 days.

4 Respondent No.1 is dead. It appears that even prior to the filing of this application he has expired. Respondent Nos.2 to 13 are duly served. They have not appeared.

5 As regards delay, the applicant says that he got the knowledge of the part decree of his appeal and thereafter applied for certified copies on 27.04.2018. He received the same on 14.05.2018. However, thereafter there was summer vacation to this Court. In the month of June, he discussed the filing with his Advocate at local level and thereafter came to know that it is required to be filed here in High Court and therefore, he started making arrangements for Court fee and other legal expenses. Thereafter, also he came to know in July, 2018 that

the contesting defendants had filed one complaint under Protection of Women from Domestic Violence Act against some defendants and had made some contrary statements. He, thereafter obtained certified copies and further took time to make financial arrangements and therefore the said delay has been caused.

6 Since the application is at present uncontested, though it can be seen that there was no necessity for the applicant to wait for collection of certified copies from another proceedings, because unless in the Second Appeal he would have got order to produce additional evidence, he could not have led his hand on those certified copies, which he said that he had collected later on. It appears that he himself had carried that impression and the other point is that he took some time to make financial arrangement. Under such circumstance, the reason given for delay appears to be sufficient and reasonable. Hence, following order.

ORDER

- 1 Application is hereby allowed.
- 2 The delay caused in filing Second Appeal is hereby condoned.
- 3 Registry to verify and register the Second Appeal and the same be placed for consideration on 22.03.2019.

(Smt. Vibha Kankanwadi, J.)