

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

937 CIVIL APPLICATION NO.13859 OF 2018
IN SAST/29875/2018

NANDKISHOR BALWANTRAO PATIL
VERSUS
SATYABHAMA BALAJI MALI (WAGHMARE)

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Advocate for Applicants : Kanawade Ajay T. & S.k. Mathpati
Advocate for Respondent : Mr. S. D. Bhosle holding for Mr. Gunale V. D.

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CORAM : SMT.VIBHA KANKANWADI, J.
DATE : 20-03-2019.

PER COURT :

1. Present application has been filed for getting the delay of 109 days condoned for filing second appeal. The applicant submits that, due to inadvertence he had filed Writ petition No. 10635 of 2018 before this Court in which he had challenged the rejection of delay condonation application before the first appellate court. The said writ petition was disposed of with liberty to file second appeal on 25-09-2018, and therefore, according to the learned advocate appearing for the applicant, the delay is actually for 24 days only.
2. The application is strongly objected by respondent on the ground that, applicant cannot take advantage of preferring writ petition and then getting it withdrawn or disposed of with liberty. The delay is not

at all properly explained.

3. It appears that, the applicant had preferred the said writ petition challenging the same order. When it was pointed out that, second appeal would lie, the learned advocate appearing for the applicant sought liberty. A specific observation made by this Court that, *"The time spend by the petitioner before this Court from 03-04-2018 till the passing of the said order, would be considered as a ground in support of the application for condonation of delay as this petition was filed within 30 days from the date of the impugned order."* Therefore, definitely that period is required to be deducted. The delay would be of only 24 days.

4. Taking into consideration that the applicant is coming from a rural background and he is an agriculturist, the application is allowed. Delay is condoned. Registry to verify and register the second appeal and place it for consideration on 24-04-2019.

(SMT. VIBHA KANKANWADI)
JUDGE

vjg/-.