

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

**929 CIVIL APPLICATION NO.13504 OF 2018
IN SAST/30855/2018**

**NAGNATH BABURAO WADWALE
VERSUS
DATTU SHIVAJI WADWALE AND OTHERS**

...

Mr. D.A. Naik, Advocate for the applicant

Mr. V.M. Vibhute, Advocate for the respondent Nos.1 to 3

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CORAM : SMT. VIBHA KANKANWADI,J.

DATE : 22th FEBRUARY, 2019

PER COURT :

1 Present applicant/appellant is the original plaintiff, who had filed R.C.S. No.321/2008 before 2nd Joint Civil Judge Senior Division, Osmanabad for permanent injunction. The said suit came to be decreed on 16.06.2010. Thereafter, there was delay in approaching the First Appellate Court and therefore, he had filed Miscellaneous Application No.150/2017 for condonation of delay. It was stated that there was delay of 7 years 3 months and 30 days. The said application came to be rejected on 18.06.2018 and therefore, now, the present applicant/appellant wants to prefer the Second Appeal challenging the said order of rejecting his application for condonation of delay, however, there is delay of 25 days.

2 It is stated that he applied for the certified copies and got them

on 03.09.2018. He also collected necessary documents till 25.09.2018 and came to Aurangabad on 29.09.2018 to hand over the documents and for giving instructions to his Advocate. However, learned Advocate took time to prepare and file the Second Appeal. He says that the delay is unintentional.

3 The application has been objected on the ground that delay of each day has not been explained. So also the applicant appears to be habitual in committing delay.

4 Heard both sides. Both the learned Advocates have submitted their arguments in support of their respective contentions.

5 Though, in the past also, at the First Appeal stage, it appears that there was delay, however, as regards the delay caused here in approaching this Court is concerned, it is 21 days and it is stated to have been caused due to the time taken by Advocate to prepare and file the Second Appeal. It was beyond the control of the applicant and therefore, taking liberal view, the delay is hereby condoned by allowing the application. Registry to verify and register the Second Appeal. It be placed for consideration on 27.03.2019.

(Smt. Vibha Kankanwadi, J.)