

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

907 CIVIL APPLICATION NO.14226 OF 2017
IN SAST/33764/2017 WITH CA/4099/2018 IN SAST/33764/2017

NIRMALA CHANDAR THOMBRE
VERSUS
VISHNUDAS BABURAO THOMBRE AND OTHERS

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Mr. V.V. Bhavthankar, Advocate for the applicant
Mr. M.L. Dharashive, Advocate for the respondent No.1

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CORAM : SMT. VIBHA KANKANWADI, J.

DATE : 24th JANUARY, 2019

PER COURT :

1 Heard both sides. Present application has been filed for getting the delay of 485 days condoned caused in filing Second Appeal.

2 Present respondent No.1 is the original plaintiff, who had filed suit bearing Regular Civil Suit No.246/2005 against the present applicant and others for declaration, perpetual injunction and for separate possession in respect of land admeasuring 1 Acre 21 Gunthas situated at village Umbadga (Kh), Tq. Ausa, Dist. Latur. It was alleged by plaintiff that the defendant No.1 has encroached on the suit land to the extent of 69 Ares. The said suit came to be dismissed. However, the plaintiff had preferred

R.C.A. No.60/2012 before District Court, Latur. Learned Ad-hoc District Judge-1, Latur allowed the appeal on 11.03.2016, thereby decreeing the suit. The present applicant intends to challenge the said Judgment and Decree passed by the Appellate Court, however, there is delay. The applicant submits that she is residing in a small village. She is 77 years old illiterate lady. Her husband is handicapped. She does the work of grazing goats and has no sufficient income to engage Advocate. When she received summons in Regular Darkhast No.31/2016 from AUSA Court on 15.09.2017 she became aware about the decision of the First Appellate Court. It is stated that in order to make financial arrangement and due to her illiteracy and old age she could not file the Second Appeal in time. It is stated that the delay is unintentional.

3 Learned Advocate appearing for the respondent No.1 has raised oral objection stating that the delay of 485 days is not properly and reasonable explained. In fact, the delay of each and every day was required to be explained.

4 The other respondents are served but failed to appear.

5 It is not in dispute that the applicant is an old lady she is also illiterate and coming from the rural background. These reasons are sufficient to condone the delay. Liberal approach is required to be taken

when such party is involved in any matter. Hence, following order.

ORDER

- 1 Application is allowed.
- 2 The delay in filing Second Appeal is hereby condoned.
- 3 Registry to verify and register the Second Appeal and it be placed for consideration on 21.02.2019.

(Smt. Vibha Kankanwadi, J.)

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