

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

**CIVIL APPLICATION NO. 3607 OF 2018
IN SAST 34083/2017
WITH CA 3608/2018**

Oil Seeds Specialist & Anr.

...Applicants

Versus

Dinkar Keshavrao Patil

...Respondent

.....

Mr. P. L. Shahane & Mr. Parag Shahane, Advocates for Applicants.

Mr. V. D. Hon, Advocate instructed by Mr. A. V. Hon, Advocate for Respondent.

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CORAM : SMT. VIBHA KANKANWADI, J.

DATE : 04-02-2019.

ORAL ORDER :

01. Present application has been filed getting the delay condoned, which has been caused in filing the second appeal.

02. The applicants / appellants are the original defendants. Present respondent had filed the Special Civil Suit No. 124 of 2006 before 3rd Civil Judge, Senior Division, Jalgaon for recovery of money. The learned 3rd Civil Judge, Senior Division, Jalgaon had partly decreed the suit on 21.1.2011. Original plaintiff himself had preferred the appeal bearing R. C. A. No. 1011 of 2012.

The learned District Judge-3, Jalgaon has allowed the said appeal and enhanced the decretal amount. Now, the appellants / applicants intend to challenge the said Judgment and decree. According to the applicants, there is delay of 173 days. It is stated that though the certified copies were obtained immediately, however, due to the administrative approval and that the applicant to whom the matter was entrusted for filing second appeal could not get those copies, he wrote a letter and then obtained those copies in which much time is said to have been consumed and thereafter, again after the draft was prepared it was required to be approved. It is stated that the delay is an unintentional. The applicant has prayed for condonation of delay.

03. The application has been objected by the respondent on the ground that whatever ground has been mentioned in para No. 4 of the application can not be said to be reasonable and just to condone the delay. The learned Advocate for the respondent submitted that when the certified copies were obtained immediately, there was no hurdle for the applicants to approach and file the second appeal in this Court. It is stated that now the administrative latches can not be taken as an advantage to get the delay condoned.

04. It is to be noted that the present appellants are the juristic persons. Under such circumstance, they act with the help of human beings and when it is an institute it has its own procedure. Though the computation of delay is objected by the respondent, as per the calculation by this office the delay is of 178 days. When as per the procedure, if approval of the necessary committee or the authority is required, then the time taken in that process can be said to be a justified ground. Here, in this case though the certified copies are stated to be immediately obtained, yet, due to the legal advice or inability of the Advocate to prepare the draft in absence of certified documents can also be taken as a reasonable ground. The first and the foremost point that is required to be seen is that though the suit was partly decreed, the plaintiff himself had approached to the Appellate Court and then again the appeal is also partly decreed. No doubt, it is a money decree, yet, it is also required to be seen as to whether the vital rights of the parties are affected by the said Judgment and decree or not. Plaintiff had claimed recovery of Rs. 2,57,000/- as an Advocate fees. The learned Trial Court had granted the amount of Rs. 45,000/- to be recovered with interest @ 12% per annum. Thereafter, the Appellate

Court has granted a decree of Rs. 61,000/- together with 12% interest. When this fact is now under challenge, the appellants / applicants should receive an opportunity to defend the same. The delay appears to be not intentional delay and therefore, the ground is made to condone the same. However, the inconvenience that would be caused to the respondent deserves to be compensated in terms of money.

05. Hence, following Order;

ORDER

(i)The application is hereby allowed.

(ii)The delay caused in filing second appeal is hereby condoned subject to deposit of cost of Rs. 5,000/- within 3 weeks from the date of this Order.

(iii)After the cost is deposited, it be disbursed to the respondent.

(iv)Registry to verify and number the second appeal and thereafter, it be placed for consideration on 14.3.2019.

[SMT. VIBHA KANKANWADI]

JUDGE

Dahibhate/-