

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

933 CIVIL APPLICATION NO.7056 OF 2017
IN
SECOND APPEAL STAMP NO.33979 OF 2015

BABARAO SHAHUJI YEDE
VERSUS
KAUTIKABAI GOVIND KADAM & OTHERS

...
Advocate for Applicant : Mrs.R.R.Tandale,
Advocate holding for Mr.S.S.Thombre
Advocate for Respondent nos.1 and 2 :
Mr.N.B.Jadhav

...
CORAM : V.L.ACHLIYA, J.
DATE : 07.08.2019

PER COURT:

1] The applicant-appellant has filed this Civil Application seeking condonation of delay of 157 days in filing the Second Appeal.

2] Heard learned counsel for the applicant-appellant and respondent nos.1 and 2.

3] In brief, it is the contention of the learned counsel for the applicant-appellant that the delay caused in filing the

Appeal was not deliberate and intentional. But primarily caused due to non-communication of the judgment and decree passed in the matter by the advocate representing the applicant-appellant before the First Appellate Court. The judgment and order was passed on 16.03.2015. In the month of August, 2015, when the applicant approached the Advocate to enquire about the case, he was informed about the decision in the matter. Immediately thereafter, the applicant moved an application for certified copy and received the same on 25.08.2015. After seeking certified copy, the applicant approached the Advocate for filing Appeal, he was directed to collect the copies of other documents and also asked to arrange for the funds to file Appeal. Due to this reason, the Appeal could not be filed immediately after receipt of the certified copy. It is submitted that the applicant is old aged

person so also he took some time in collecting all the documents and arranging the funds. It is further submitted that in case delay is not condoned, there is every likelihood that a meritorious matter may be rejected for technical reason.

4] On the other hand, learned counsel for the respondents has opposed the application with contention that the cause assigned for condonation of delay cannot be treated as sufficient cause to condone the delay of 157 days. By referring the fact, learned counsel submits that the applicant has received the certified copy on 25.08.2015. Application was presented on 13.11.2015. There is no cause assigned as to delay in filing Appeal after receipt of the certified copy. In this background, learned counsel submits that the reasons assigned are by way of an afterthought and urged to reject the application.

5] I have carefully considered the submissions advanced in the light of the reasons assigned to condone the delay, which remains unchallenged and uncontroverted, I am of the view that the delay deserves to be condoned. The cause assigned for condonation of delay can be accepted as sufficient cause to condone the delay in filing Appeal. It is well settled position in law that while dealing with an application seeking condonation of delay, the Court must adopt liberal and pragmatic approach. In the case of *Esha Bhattarjee v. Managing Committee of Raghunathpur Nafar Academy & others* reported in (2013) 12 SCC 649, the Apex Court, after taking survey of precedents of law on the issue of condonation of delay, has laid down broad principles to be followed while dealing with an application seeking condonation of delay. Considering the over all facts and cause assigned for condonation of delay in

the light of broad principles laid down in the case of *Esha Bhattarjee v. Managing Committee of Raghunathpur Nafar Academy & others [supra]*, I am of the view that the delay deserves to be condoned. In case delay is condoned, no serious prejudice would be caused to the respondents. On the contrary, if the delay is not condoned, there is every likelihood that a meritorious matter may be rejected for technical reason. I am, therefore, inclined to allow Application. Hence the Application is allowed. Delay is condoned.

6] Appeal be registered. List the Appeal for admission on 26th August, 2019.

[V.L.ACHLIYA]
JUDGE