

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

Second Appeal No. 0931 of 2018

District : Latur

Waman s/o. Jema Jadhav,
Age : 47 years,
Occupation : Agriculture &
Labour,
R/o. Hasegaon,
Taluka AUSA, Dist. Latur.

.. Appellant
(Original
defendant)

versus

Govind s/o. Kishan Pawar,
Age : 48 years,
Occupation : Agriculture,
R/o. Nitur Tanda,
Taluka Nilanga,
Dist. Latur.

.. Respondent
(Original
plaintiff)

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Mr. M.L. Dharashive, Advocate, for the appellant.

Mr. B.R. Kedar, Advocate, for the respondent.

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CORAM : SMT. VIBHA KANKANWADI, J.

DATE : 05TH FEBRUARY 2019

ORAL JUDGMENT :

01. Present appeal has been filed challenging the judgment and decree passed in Civil Misc. Application No. 170 of 2018, by learned Principal District Judge, Latur, dated 19-10-2018. In the said appeal, judgment and decree passed by 2nd Joint Civil

Judge (J.D.), AUSA, District Latur, in Regular Civil Suit No. 481 of 2012, dated 22-06-2018, was challenged.

02. The present appellant is the original defendant against whom the suit for specific performance of contract was filed. The suit was tried on merits and it came to be decreed. Defendant intended to challenge the said judgment and decree. However, there was delay of 19 days and, therefore, application under Section 05 of the Limitation Act came to be filed. It was contended by the applicant - present appellant, that due to misunderstanding and inadvertence, he could not file the appeal within limitation. Further, he contended that he is an illiterate person. He has no knowledge of law and the delay is unintentional. After hearing both sides, learned Principal District Judge, Latur, has rejected the application on the ground that the delay is not properly explained and the reason given is not satisfactory. Hence, present appeal.

03. Heard learned Advocate for the appellant. So also, heard learned Advocate for the respondent.

04. Learned Advocate for the appellant made submissions in support of his contention, that the learned first appellate Court ought to have considered that the applicant before the court was a

rustic villager, illiterate and, therefore, liberal approach ought to have been adopted when there was delay of 19 days.

05. Learned Advocate for the respondent has supported the impugned order.

06. It is to be noted that the applicant is stated to be an agriculturist and a labour. He is coming from Hasegaon village, Taluka AUSA, District Latur. The delay was of 19 days. He had given reason about his illiteracy, lack of knowledge and it was also stated that due to some misunderstanding and inadvertence, the appeal was not preferred within limitation. Learned first appellate Court has observed that the delay is not calculated properly. However, in the order, actual calculation has not been done by the first appellate Court, if it was of the view that the number of days which have been calculated by the applicant were not proper. Definitely, illiteracy of a person and when he is coming from village, that is sufficient ground. Learned Principal District Judge, Latur, erred in not considering this to be a sufficient reason. In fact, in catena of judgments, this Court as well as Hon'ble Apex Court have observed that while dealing with an application for condonation of delay, liberal approach is required to be taken. Under such circumstance, the said order of rejection of the

application to condone the delay deserves to be set aside by allowing this appeal.

07. Hence, the following order :-

(a) The second appeal is allowed.

(b) The order passed below Exhibit 01 in Civil Misc. Application No. 170 of 2018 passed by learned Principal District Judge, Latur, dated 19-10-2018, is hereby set aside. The said application stands allowed. The first appellate Court to register the appeal and deal with it as per the procedure of law.

(Smt. Vibha Kankanwadi)
JUDGE

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