

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

943 CIVIL APPLICATION NO.1565 OF 2018
IN SAST/34930/2017

GAJRABAI SOPAN JADHAV AND ANOTHER
VERSUS
BASU GOROBA ALTE AND OTHERS

...
Advocate for Applicants : Mr. Shinde Shrikishan S.
Advocate for Respondents No.1 to 3: Mr. Vinesh Solshe holding for Mr.
Shaikh Shoyab
...

CORAM : SMT.VIBHA KANKANWADI, J.
DATE : 01-02-2019.

ORAL ORDER :

1. Heard Mr. S. S. Shinde, the learned advocate appearing for the appellants. Learned advocate Mr. Vinesh Sonshe holding for advocate for respondents No.1 to 3 submits that, Mr. Shaikh, Advocate has gone out of station and he prayed for adjournment.
2. It is to be noted that, Mr. Shaikh has not field leave note. It is only the question of condoning the delay. Under such circumstance, the matter is not adjourned.
3. Applicants are the original plaintiffs who had filed Regular Civil Suit No.139 of 2006 before Civil Judge, Junior Division, Kallamb for declaration of ownership and injunction. The suit came to be partly

allowed. They have been held to be the owners of the suit property, however injunction has been refused. They preferred Regular Civil Appeal No. 20 of 2012 before District Court, Osmanabad. The said appeal was heard by the learned Ad-hoc District Judge-1, Osmanabad and the appeal has been dismissed on 20-02-2015. The applicant intends to challenge the said Judgment and decree further in this second appeal.

4. There is delay of 892 days in filing the appeal. The applicants have contended that, they were not in touch with their advocate representing them in appeal. They are illiterate ladies. Further the applicant No.2's grand-daughter was detected with Cancer, due to which the whole family is under shock. They are poor. They got the knowledge about the dismissal of their appeal somewhere in August 2017. Thereafter, they had approached their advocate in the First Appellate Court for certified copies, and thereafter, they met advocate at Aurangabad in October 2017. But thereafter some time was consumed due to Diwali vacation. Under such circumstance it is stated that, the delay has been caused which was unintentional, and therefore, they have prayed for condonation of delay.

5. It is not in dispute that, both the appellants are illiterate

ladies, they are coming from a rural background. They are residing at Watwada Tq. Kallamb Dist. Osmanabad and the appeal was preferred before District Court, Osmanabad. Taking into consideration all these facts definitely case is made out to condone the delay as this Court is required to take a liberal approach when the parties are illiterate and poor. At the same time the inconvenience that would be caused to the respondents will have to be mitigated in terms of money. Hence, following order.

ORDER

- 1) Application is allowed.
- 2) The delay caused in filing second appeal is hereby condoned subject to deposit of cost of Rs.3,000/- (three thousand) in this Court within 15 days from today.
- 3) Upon the deposit of said amount, it be disbursed to respondents No.1 to 3 equally.
- 4) Registry to verify and register the second appeal and it be placed for consideration on 18-03-2019.

(SMT. VIBHA KANKANWADI)
JUDGE

vjg/-.