

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

**912 CIVIL APPLICATION NO.4011 OF 2018
IN SAST/36744/2017**

**JAMUNABAI ROHIDAS PATOLE AND OTHERS
VERSUS
SHILA JOHN PATOLE AND OTHERS**

...

Mr. D.G. Nagode, Advocate for the applicants

Mr. R.R. Karpe, Advocate for the respondent Nos.1, 2 and 4

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CORAM : SMT. VIBHA KANKANWADI, J.

DATE : 09th APRIL, 2019

PER COURT :

1 Present application has been filed to get delay of 142 days condoned in filing Second Appeal.

2 Present applicants are the original defendants. Present respondents had filed Regular Civil Suit No.38/2004 for declaration and mandatory injunction. The said suit came to be decreed by learned 2nd Joint Civil Judge Junior Division, Newasa on 27.02.2008. Thereafter, the present applicants had approached learned District Judge-1, Newasa in Regular Civil Appeal No.93/2014. After hearing the appeal, the learned First Appellate Court has dismissed the appeal on 16.03.2017. Hence, the present applicants

are the desirous for filing Second Appeal, however, there is delay of 142 days. It has been contended that the applicants are agriculturists. Except income from agricultural land they do not have any other source of income. They sold the crop in first week of November, 2017 and thereafter, after collecting the amount they approached Advocate at Aurangabad and therefore, there is delay. They say that the delay is due to said financial condition and therefore not intentional.

3 The application has been strongly objected on the ground that the reason is false and not sufficient, much reasonable to condone the delay. Further, they have filed photo copy of Judgment in R.C.S. No.393/2017 passed by 11th Joint Civil Judge Senior Division, Pune dated 06.03.2018, thereby the respondent No.3 was declared as civil dead. It was also stated that steps have not been taken to bring his legal representatives on record.

4 At the outset, it can be seen that respondent No.3 was aged 18 when the application is stated to have been filed. Further, when the suit was filed, his age was given by the respondents themselves as 15. Therefore, as a minor he had also filed it along with next friend, original plaintiff No.1. The other respondents are brothers. Therefore, it appears that his legal representatives are already on record. Therefore, it is not

necessary to bring his legal representatives on record. Only statement to that effect is required to be made in the title of the appeal as well as Second Appeal. That cannot be the ground to reject the application.

5 As regards delay of 142 days is concerned, the applicants have come with a specific case that they are the agriculturists and it can be certainly seen from the suit also. The occupation of original defendant Nos.1 to 5 is said to be agriculture and defendant No.6's to 8's occupation is household. Therefore, there appears to be some substance in the say of applicants that due to financial condition they could not approach this Court in Second Appeal within limitation and therefore, reasonable ground has been shown to condone the delay. Hence, following order.

ORDER

- 1 The application is allowed.
- 2 Delay is condoned.
- 3 Registry to verify and register the Second Appeal and place the same for consideration on 13.06.2019.

(Smt. Vibha Kankanwadi, J.)