

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

Civil Application No. 14625 of 2017
(In Second Appeal Stamp No. 37993/2017)

District : Osmanabad

Venkat s/o. Girjappa Kaste,
Age : 42 years,
Occupation : Agriculture,
R/o. Tugaon, Taluka Omerga,
Dist. Osmanabad.

.. Applicant
(Original
defendant)

versus

Sanjivani Bhagwan Thokale,
Age : 45 years,
Occupation : Household,
R/o. Sawargaon,
Taluka Tuljapur,
Dist. Osmanabad, at present
R/o. CIDCO, Nashik,
Dist. Nashik
& 06 others.

.. Respondents
(Original
defendants)

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Mr. M.B. Kolpe, Advocate, for the applicant.

Mr. V.R. Dhorde, Advocate, for respondent no.01.

*Mr. Shrikant Y. Patil, Advocate, for respondents
no.02, 03, 05 and 06.*

Respondents no.04 and 07 served.

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CORAM : SMT. VIBHA KANKANWADI, J.

DATE : 21ST FEBRUARY 2019

ORAL ORDER :

01. Present application has been filed to get the delay of 95 days condoned in filing second appeal.

02. The applicant is the original defendant. Present respondent no.01 was the plaintiff who had filed suit for partition and separate possession against the present applicant and others, bearing Regular Civil Suit No. 304 of 2007 before Joint Civil Judge (Senior Division), Omerga. The said suit came to be partly decreed on 15-01-2013. Thereafter, the present applicant approached the District Court at Omerga in Regular Civil Appeal No. 16 of 2016 challenging the said judgment and decree passed by the trial Court. The said appeal came to be dismissed on 29-04-2017. Now, the present applicant intends to file this second appeal. However, there is delay of 95 days.

03. The applicant states that he came to know from his Advocate in the first week of May 2017, regarding the judgment and decree passed in his appeal. But he says that due to vacations, he could not meet Advocate to submit application for certified copies. He says, that thereafter there was marriage of his daughter on 07-05-2017 due to which, he could not spare time. He was busy in making arrangements for the marriage and also he

could not arrange for the expenses to get the copies. It is thereafter stated that after marriage, he was engaged in agricultural work and ultimately he applied for the certified copies on 10-10-2017. He received the copies on 04-11-2017 and then approached the Advocate at Aurangabad. It is stated that the delay is unintentional.

04. The application has been objected by the learned Advocate appearing for respondent no.01, stating that there is no proper explanation giving details of each and every day. It is also submitted that the applicant was negligent as he did not even apply for certified copies till 10-10-2017 though he says that he came to know about the decision in the first week of May 2017.

05. In order to cut short, it can be said that both the learned Advocates have argued in support of their respective contentions.

06. At the outset, it can be said that though the applicant says that the marriage of his daughter was solemnized on 07-05-2017, he has not produced any documentary evidence about the same. Yet, that fact can be accepted when he is giving a specific date. It can be understood that when he came to know about the decision regarding his appeal in first week of May 2017, he was busy in the

arrangements of marriage of his daughter. He has also stated that he could not make arrangement for expenses of certified copies. Though it appears to be somewhat exaggerated, but it can also stated that he might have spent some amount on the marriage of his daughter. As regards the period after the marriage of his daughter is concerned, it is stated that due to agricultural work, he could not approach the court to take certified copies till 10-10-2017. The applicant being busy in agricultural operations, cannot be taken as reasonable ground. There cannot be a leniency only for the farmers on the count that they would be busy in their work. Every litigant is having some occupation and if he comes and says that he was busy in his occupation, then that cannot be a good ground, much less reasonable and sufficient, to condone the delay. However, at the same time, though no specific pleading is there, it cannot be ignored that the applicant is coming from rural area. He is an agriculturist and, therefore, taking into consideration the drought situation prevailing in this region, some kind of leniency is required to be given to the applicant while construing the application for condonation of delay liberally. The delay of 95 days cannot be said to be inordinate and huge. Therefore, whatever reason has been given, appears to be sufficient and reasonable to condone the delay. However, at the same time, it requires that respondent no.01 should be compensated in terms

of money.

07. Hence, the following order :-

(a) The application is hereby allowed.

(b) The delay caused in filing second appeal is hereby condoned subject to deposit of costs of Rs. 3,000/- [Rupees three thousand] in this Court, within a period of 15 (fifteen) days from the date of this order. After the costs is deposited, it be disbursed to the respondent no.01. After deposit of the amount, the appeal be verified and numbered. It be placed for consideration on 19th March 2019.

(Smt. Vibha Kankanwadi)
JUDGE

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