

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

22 CIVIL APPLICATION NO. 1690 OF 2019
IN
SAST/37127/2018

SHANTARAM PUNDLIK PAWAR
VERSUS
SHANKAR GANPAT LOHARKAR AND OTHERS

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Mr. U.S.Patil, Advocate for Applicant.
Mr. N.S.Shah, Advocate for R – 1 to 4.

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CORAM : V.L.ACHLIYA, J.

DATE : 08/07/2019

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ORAL ORDER :

1. The applicant/appellant has moved this application for condonation of 161 days delay in filing Second Appeal.
2. Heard learned counsel for applicant/appellant and respondent Nos. 1 to 4.
3. In brief, it is the contention of learned counsel for applicant/appellant that the delay caused in filing appeal was mainly due to non communication of Judgment and Order by the Advocate representing the applicant. In the month of July, 2018 when the applicant contacted his Advocate, he was informed about dismissal of appeal. Thereafter, the applicant obtained certified

copy and raised funds for filing appeal. In that process, there was delay in filing appeal. In this back-ground, learned counsel for applicant submits that the delay caused in filing appeal can not be termed as deliberate and intentional. It is further submitted that in case delay is not condoned there is every likelihood that meritorious matter may be rejected for technical reasons.

4. On the other hand, learned counsel for respondents opposed the application with the contention that the appeal filed by the applicant is without merit. There are concurrent decisions rendered by the Courts below. It is submitted that the relief claimed in the Suit is barred by the doctrine of res-judicata. It is further submitted that the reasons assigned are false, concocted and made with ulterior motive.

5. On due consideration of the submissions advanced in the light of cause assigned for condonation of delay, I am of the view the delay deserves to be condoned. So far as merit of appeal is concerned, it can be considered at the time of admission of appeal. If delay is condoned no serious prejudice would be caused to the respondents. On the contrary, if delay is not condoned the possibility can not be ruled that meritorious matter may be rejected for technical reasons.

6. In that view, the application is granted subject to cost of Rs. 5,000/- [Rupees Five Thousand] to be payable by the applicant to the respondents. The payment of cost shall be condition precedent to register the appeal. The cost be deposited in this Court within three weeks from the date of this order. On deposit of cost and removal of office objections, appeal be registered and listed for hearing. Failure to deposit cost, the order of condonation of delay stands recalled.

7. The application stands disposed of in above terms.

[V.L.ACHLIYA]
JUDGE

KNP.