

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

**CIVIL APPLICATION NO. 3302 OF 2018
IN SECOND APPEAL NO. 222 OF 2017**

Dattatraya Dagadu Mali

...Applicant

Versus

Chandrakala Sadhu Gawali & Ors.

...Respondents

.....

Mr. N. B. Jadhav, Advocate for Applicant.

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CORAM : SMT. VIBHA KANKANWADI, J.

DATE : 23-01-2019.

ORAL ORDER :

01. Heard learned Advocate appearing for appellant/applicant-original appellant. The present application has been filed for condoning the delay of 126 days in filing review application. It is stated that the applicant was not aware about the dismissal order and thereafter due to financial constraints he could not file the review petition.

02. It will not be at this stage itself the arguments in respect of the points on which the review is sought is also canvassed. The first and the foremost fact is that every opportunity was given by this Court to the

appellant to argue the matter. The applicant-appellant was the original defendant No. 1. Respondents No. 1 and 2 were the original plaintiffs, who had filed R. C. S. No. 88 of 2008 before Joint Civil Judge, Senior Division, Osmanabad for partition and separate possession. It came to be dismissed on 25.2.2010 against the same Judgment and decree they had preferred R. C. A. No. 96 of 2010. The said appeal came to be allowed by the learned Principal District Judge, Osmanabad on 10.3.2016 thereby decreeing the partition suit. Therefore, the second appeal was filed. The matter was heard by this Court and disposed of by dismissing the appeal stating that it does not involve any substantial question of law by order dated 29.6.2017. Now, it appears that again the same points are proposed to be raised in review petition by the applicant, which he had raised at the time of admission. This Court can not sit as appeal on its own order. All those points were already dealt with if at all the applicant is aggrieved by the decision of this Court, the legal course is open to the applicant, however, it can not be stated that there is any error apparent on the face of record while passing the impugned order by this Court on 29.6.2017. Now, the applicant comes with a case that his Advocate has not communicated the order to him and due to financial

constraint he could not prefer this application within time. He also raised plea that since he is from a far place from the High Court, he could not come. Even if for the sake of arguments it is accepted that there might be a case for condoning the delay by taking liberal approach, yet, no case is made out to review the order of this Court. Hence, the application is rejected.

[SMT. VIBHA KANKANWADI]

JUDGE

Dahibhate/-