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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

926 CIVIL APPLICATION NO.5443 OF 2019
IN SECOND APPEAL (ST.) NO.37984/2018

DHARBA BAJIRAO DUBE AND ANOTHER
VERSUS
SANTABAI SOPANRAO KHATING

...

Advocate for Applicants : Shri Wange Anand D.
Advocate for Respondent : Shri Prakash S. Paranjape

CORAM: V.L. ACHLIYA, J.

DATE: 02.07.2019

PER COURT :

1] The applicants have filed this application seeking condonation of 793 days delay in filing appeal.

2] Heard learned counsel for the applicants and respondent.

3] In brief, it is the contention of learned counsel for the applicants that the delay caused in filing appeal was not deliberate and intentional. It was caused due to the reason that the Advocate representing the applicants has not communicated the decision in appeal. The applicants came to know about passing of the decree when they received notice of execution of decree. After receipt of notice of execution proceedings, they approached the Advocate and thereafter obtained certified copy and filed this appeal. In the process, there was

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delay of 793 days in filing appeal.

4] Learned counsel for the applicants submits that if delay is condoned, no serious prejudice would be caused to the other side as the appeal will be decided on its own merits. If any prejudice is caused to the respondent, that can be compensated in terms of money by awarding suitable costs.

5] On the other hand, learned counsel for the respondent opposed the application with contention that the cause assigned for condonation of delay is false and concocted. No sufficient cause has been assigned to condone the delay. It is further submitted that there is no merit in the appeal preferred by the applicants. Both the Courts below have decided in favour of the respondent. No substantial question of law is involved in the appeal so as to entertain the second appeal preferred by the applicants.

6] On due consideration of the submissions advanced in the light of unchallenged and un-controverted pleadings made in the application, I am of the view that the delay deserves to be condoned subject to heavy costs. If delay is condoned, no serious prejudice would be

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caused to the respondent. On the contrary, if delay is not condoned, there is every likelihood that a meritorious matter may be rejected for technical reason. I am, therefore, inclined to allow the application subject to payment of costs.

7] Accordingly, the civil application is allowed and delay is condoned subject to payment of costs of Rs.20,000/- to be payable by the applicants to the respondent within three weeks. Costs be deposited in this Court. On deposit of costs, appeal be registered. On failure to deposit costs within three weeks, the order of condonation of delay shall stand recalled and the application be treated as dismissed. In case costs are deposited, the appeal be registered subject to removal of office objections and be listed for hearing on 5.8.2019. In the event the costs are deposited, the respondent is granted liberty to withdraw the same.

8] The application be marked as disposed of in above terms.

(V.L. ACHLIYA, J.)