

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

940 CIVIL APPLICATION NO.11643 OF 2019
IN SECOND APPEAL STAMP NO. 20765 OF 2019

JYOTI CHITRA MANDIR & OTHERS

VERSUS

ANILKUMAR BANSIKUMAR CHHAJED & OTHERS

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Mr.G.D.Jain, Advocate holding for Mr.Amol S. Sawant, Advocate for the applicants.

Mr.M.M.Jadhav, Advocate holding for Mr.S.P.Shah, Advocate for the respondent no.1.

Mr.Umesh Gite, Advocate holding for Mr.M.S.Deshmukh, Advocate for the respondent nos.2, 3b to 3e, 4a to 4d.

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CORAM : V.L.ACHLIYA,J.

DATE : 28.02.2020

P.C.

1] The applicants have moved this application seeking condonation of 141 days delay in filing appeal for the reasons set out in detail in the application.

2] Heard learned counsel for the applicants-appellants and the advocate representing the respondent nos.1, 2, 3b to 3e and 4a to 4d. The respondent no.3 though served absent.

3] In brief, it is the contention of the learned counsel for the applicants that

delay caused in filing appeal cannot be termed as deliberate and intentional. It is submitted that after decision of the First Appellate Court, the applicants approached to the Advocate representing the applicants before the First Appellate Court and as per advise application for certified copy was made. Thereafter, the applicants approached to the Advocate before the trial Court but the advocate of the applicants was out of station due to Christmas vacation. Subsequently, the advocate before the trial Court told the applicants—appellants that appeal will have to file in the High Court at Aurangabad. Thereafter, the applicants approached to the Advocate at Aurangabad for filing appeal. He instructed to secure copies of the judgment and decree passed by the Courts below and other documents. After securing the documents and arranging for the court fees to be paid filed appeal in the month of July, 2019. In the process, delay of 141 days has been caused in filing appeal. It is the contention of the learned counsel for the applicants that the applicants are old aged person they were not properly advised in the matter. The trial Court has decreed the suit as against defendant no.6. In an Appeal

preferred by the defendant no.6, the judgment and decree has been modified and the applicants-appellants have been made liable to pay Rs.40,000/- with interest, along with original defendant no.6, and therefore, the applicants-appellants are required to file appeal. It is submitted that the cheque in question was accepted by the defendant no.6 in his personal capacity. The applicants-appellants have good case to succeed on merits. If delay is not condoned, there is every likelihood that a meritorious matter may be rejected for technical reasons.

4] On the other hand, learned counsel for the respondents opposed application with contention that the reasons assigned are false and concocted and not sufficient to condone the delay.

5] On due consideration of the submissions advanced in the light of unchallenged and uncontroverted pleadings made in the application assigning cause for condonation of delay, I am of the view that delay deserves to be condoned. The cause assigned can be accepted as sufficient cause to condone delay. If delay is condoned, no

serious prejudice would cause to the other-side as ultimately appeal will be decided on its own merit. On the other hand, if delay is not condoned, there is every likelihood that a meritorious matter may be rejected for technical reasons. I am, therefore, inclined to allow the application. Accordingly, application is allowed in terms of prayer clause-B, subject to cost of Rs.3,000/- [Rupees Three Thousand only] to be payable by the applicants-appellants to the High Court Legal Services Sub-Committee, Aurangabad.

6] Cost be deposited within four weeks from today.

7] Appeal be registered.

8] Office objections, if any, be removed within two weeks from the date of registration of the appeal.

9] Civil Application is disposed of in above terms.

[V.L.ACHLIYA]
JUDGE