

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

**CIVIL APPLICATION NO.7532 OF 2020
WITH CA/7533/2020**

**DADASAHEB UTTAMRAO VETAL
VERSUS
ASHABAI GANGADHAR PATIL AND OTHERS**

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Advocate for Applicant : Mr. Anant Devakate
Advocate for Respondent No.1: Mr. R.R. Imale
Advocate for Respondent Nos. 2 to 5 : Mr. L.R. Tade

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CORAM : MANGESH S. PATIL, J.

DATE : 27.11.2020

PER COURT :

This is an application under Section 5 of the Limitation Act, 1963 seeking condonation of delay of 490 days in filing the Second Appeal.

2. Learned advocate Mr. Devakate for the applicant submits that the dispute pertains to immovable property. Though there are concurrent judgments and orders of the two courts below, the applicant has genuine case and a substantial question of law to be raised in the Second Appeal. He is a rustic villager and could not prefer the Second Appeal in time because of variety of reasons including the current pandemic. A valuable right would be defeated on technical ground and the delay be condoned subject to suitable conditions.

3. Learned advocate for respondent No.1 - original plaintiff

referring to the affidavit-in-reply strongly opposes the application. He submits that the ground being put forth are absolutely false. The applicant has waited till the fag end for filing the Second Appeal. He was duly served with notices for measurment of the lands pursuant to the direction under Section 54 of the Civil Procedure Code. Even he was aware about the direction given by the Tahsildar to the Circle Officer for delivering possession pursuant to the impugned decree. That communication was issued in the month of September 2020 and to defeat the decree or create obstacles the Second Appeal has been filed.

4. I have carefully gone through the papers. It is a common knowledge that the entire world is facing the pandemic and variety of obstacles in pursuing day today affairs. Obviously that will have to be taken note of while considering any request for condonation of delay.

5. It is a matter of record that the impugned decree is for delivery of land susceptible to revenue assessment and it was sent for partition and separate possession pursuant to the provision of Section 54 of the Civil Procedure Code. The copies of the notices annexed with the Affidavit in Reply of the respondent plaintiff demonstrate that all the necessary steps leading to the direction for delivery of possession were preceded by notices to the parties concerned. But then, the law as regards condonation of delay is well settled.

6. The decision in **Collector, Land Acquisition Vs. Mst. Katiji ; (1987) 2 S.C.C. 107**, needs to be borne in mind. The appellant applicant

was not to gain anything by causing the Second Appeal to be filed belatedly. The dispute is pertaining to possession of an immovable property and going by the reasons mentioned in the application, the delay deserves to be condoned subject to imposition of certain costs as a condition precedent.

7. The application is allowed. The delay is condoned subject to payment of costs of Rs.5000/- (Rupees Five Thousand) to the respondent plaintiff within one week. On depositing the cost the Second Appeal be registered.

(MANGESH S. PATIL, J.)

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