

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

32 CIVIL APPLICATION NO.10343 OF 2019
IN
SAST/24514/2019

SHALUBAI HARIBHAU SUMBARE
VERSUS
DYANDEO BABURAO SUMBARE AND OTHERS

...
Mr.A.B.Jagtap, Advocate for applicant.
Mr.A.S.Sawant, Advocate for R-1,3,6.
Mr.S.S.Wagh, Advocate for R-2,4,5,7.

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CORAM : V.L. ACHLIYA, J.
DATE : 02/03/2020

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ORAL ORDER:

1. The applicant has preferred this application seeking condonation of 424 days delay in filing appeal for the reasons stated in detail in the application.

2. Heard learned counsel for applicant and respondents.

3. In brief, it is the contention of learned counsel for applicant that delay caused in filing appeal is not intentional and deliberate. It is submitted that husband of applicant detected with facial space

infections and the applicant was through-out busy in providing treatment to her husband. The first appellate Court passed Judgment and decree on 09/03/2018. The applicant was unaware the decision in the case. From 31/01/2018 till 07/02/2018 the husband of applicant was admitted in Ahmednagar Multi Speciality hospital at Ahmednagar. Later-on he was referred to Smt. Kashibai Nawale Medical College and General hospital, Pune for further treatment. He was discharged on 21/02/2018. Thereafter he was advised to take treatment on account of infection which was spread all over the body. Due to ailment and treatment, the husband of applicant become weak and also affected his mental condition. The applicant being only person to take care of her husband, having no source of income required to concentrate on the health of her husband. She lost track of the case. Only after the receipt of execution proceeding, she came to know about decree passed. Immediately after receipt of notice, she contacted her Advocate and then as per the advise, preferred appeal after securing requisite copies of documents and arranging fees. Learned counsel for applicant submits that the reasons are more than sufficient to

condone the delay. In support of the facts stated in the application, the applicant has produced documents of treatment including discharge card.

4. Mr. Sawant, learned counsel for respondent Nos. 1,3 and 6 opposed the application with the contention that the reasons assigned are false and concocted. It is submitted that the documents on record spell out that the husband of applicant was remained as indoor patient for limited period. It is submitted that the ailment which the husband of applicant shown to be suffered can not be termed of a nature which prevented the applicant to prefer appeal within time.

5. On due consideration of the submissions advanced in the light of unchallenged uncontroverted pleadings in the application supported with documentary evidence produced on record, I am of the view delay deserves to be condoned. If delay is condoned, no prejudice would cause to other side as ultimately the case will be decided on merit. The facts stated in the application that the husband of applicant was suffering from

serious ailment and undergoing prolong treatment is supported with documentary evidence in the nature of medico legal case papers, discharge card, report of C.T. scan, etc. In that view, the reasons assigned are more than sufficient to condone the delay. The prejudice caused to the other side can be compensated in terms of cost.

6. The application is allowed in terms of prayer clause 'A' subject to cost of Rs. 10,000/- [Rupees Ten Thousand] to be payable by the applicant to respondent Nos. 1,3 and 6. The cost be deposited within four weeks. On deposit of cost, the appeal be registered. Failure to deposit cost, the order of condonation of delay is liable to be recalled. In case cost is deposited, liberty granted to move the Court to list the appeal for admission.

7. Civil Application disposed of in above terms.

[V.L.ACHLIYA]
JUDGE

KNP