

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

**932 CIVIL APPLICATION NO.12553 OF 2019
IN
FAST/24881/2019**

**MANGAL VIJAY JADHAV
VERSUS
DADASAHEB GOKUL SHINDE AND ANR**

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Mr. A.K.Gawali, Advocate for applicant.
Mr. V.V.Tarde, Advocate for R – 1.
Ms. Sayali Tekale h/f Mr. S.G.Chapalgaonkar,
Advocate for R – 2.

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CORAM: V.L. ACHLIYA,J.

DATE : 17/01/2020

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ORAL ORDER:

1. The applicant/appellant has preferred this application for condonation of 108 days delay caused in filing appeal for the reasons set out in detail in the application.

2. Heard learned counsel for applicant and respondent Nos. 1 and 2.

3. In brief, it is the contention of learned counsel for applicant that delay caused in filing appeal can not be termed as intentional and deliberate. He submits that due to poor financial condition, the appeal could

not be presented within time. After arranging the funds to present the appeal, the applicant has preferred this appeal. In the process, delay of 95 days has been caused in filing appeal. It is submitted that applicant has good case to succeed in appeal. The Tribunal has passed order of pay and recover. The Judgment and Award passed by Tribunal is not sustainable as the findings are erroneous. The driver of the vehicle was holding effective licence to drive the vehicle in question. If delay is not condoned, it would cause serious prejudice to the applicant. No prejudice would be caused to the respondents if delay is condoned.

4. On the other hand, learned counsel for respondents opposed the application with the contention that the reasons assigned are false and concocted and same are not sufficient to condone the delay of 108 days. It is submitted that only after execution is filed, the applicant has preferred appeal.

5. On due consideration of submissions advanced in the light of unchallenged, uncontroverted pleadings made in the application, I am of the view the delay deserves to be condoned. No prejudice would be caused to the respondents if delay is condoned, as ultimately the case will be decided on its own merit.

On the contrary, if delay is not condoned, there is every likelihood that serious prejudice would be caused to the applicant. The rejection of application seeking condonation of delay would result into serious consequence. I am, therefore, inclined to allow the application. Accordingly, the application is allowed in terms of prayer clause 'B'. Delay condoned. Appeal be registered.

6. Civil Application disposed of in above terms.

[V.L.ACHLIYA]
JUDGE

KNP