

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

929 CIVIL APPLICATION NO.13430 OF 2019
IN
FIRST APPEAL STAMP NO.30530 OF 2019

TUKARAM YADOJI POTE
VERSUS
ASHOK SAJARAM GAYAKE & ANOTHER

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Advocate for Applicant : Mr.R.V.Gavhane h/f.
Mr.P.C.Mayure

Advocate for respondent no.1 : Mr.V.M.Maney
Advocate for respondent no.2 : Mr.V.N.Upadhye

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CORAM : V.L.ACHLIYA,J.
DATE : 16.01.2020

P.C.

1] The applicant has moved this application seeking condonation of 433 days delay in filing Appeal for the reasons set out in detail in the application.

2] Heard learned counsel for the applicant-appellant and the respondent nos.1 and 2. Mr.V.M.Maney, learned counsel for the respondent no.2, undertakes to file *Vakalatnama* during the course of the day.

3] In brief, it is the contention of the learned counsel for the applicant-appellant that delay caused in filing appeal is not intentional and deliberate. The applicant could not arrange funds to file appeal. After seeking financial help, the applicant could be able to file appeal. It is submitted that if delay is not condoned, serious prejudice would cause to the applicant-appellant. The applicant is ready to waive the interest of the period for which delay has been caused in filing appeal if the award is modified and enhanced compensation is granted.

4] On the other hand, learned counsel for the respondent nos.1 and 2 opposed application with contention that the reasons assigned for condonation of delay are false and concocted. No satisfactory explanation offered on the part of the applicant to explain the delay. If delay is condoned, serious prejudice would cause to the respondents as they will be saddled with liability to interest for no fault on their part.

5] On due consideration of the submissions advanced, I am of the view that delay deserves to be condoned. The claimant has preferred this Appeal, seeking enhancement of compensation. If delay is condoned, no serious prejudice would cause to the respondents as ultimately the case will be decided on its own merit. On the contrary if the application is rejected, serious prejudice would cause to the applicant-appellant. So far as prejudice caused to the respondents is concerned, learned counsel for the applicant has made statement that the applicant shall not claim interest of the period for which delay has been caused in filing appeal, in the event the compensation is enhanced. In that view, application deserves to be allowed. Accordingly, application is allowed in terms of prayer clause-B with condition that the applicant shall not be entitled for the interest over the period for which delay has been caused in filing Appeal, if the award is modified and enhanced compensation is awarded.

6] Appeal be registered subject to removal of office objection.

7] Civil Application is disposed of in
above terms.

[V.L.ACHLIYA]
JUDGE

DDC