

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

**INTERIM APPLICATION 1 OF 2020
IN
SECOND APPEAL (ST) NO.25832 OF 2019**

Vitthal Waman Bhat (Upalekar) & Ors. ..Applicants
V/s.
Rangnath Vitthal Kulkarni & Ors. ..Respondents

Mr.Avinash B. Avhad for the Applicants.

CORAM : C.V. BHADANG, J.

DATE : 11th MARCH 2020

PC.

1. Not on board. Taken on board.

2. This is an application for condonation of delay of 5 years and 189 days in filing a Second Appeal. There is a concurrent finding recorded by the Courts below granting a decree for possession in favour of the respondents/plaintiffs. The Second Appeal seeks to challenge the judgment and decree dated 13th December 2013, passed by the First Appellate Court. The present application for condonation of delay is filed on 25th September 2019.

3. The only ground made out is that the applicant No.1 (Original Defendant No.1) who at present is 87 years of age was

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looking after the matter and the other applicants were under the *bona fide* belief that the applicant No.1 has filed second appeal as they were informed so by the applicant No.1. According to the applicants they become aware of the non-filing of the second appeal only when they were served with the notice in the execution proceedings.

4. In my considered view such an omnibus explanation cannot be accepted as a 'sufficient cause', for not filing the appeal within time.

5. It is now well settled that although the Court can take a liberal view of the matter, while condoning the delay of a short duration a stricter approach is warranted while considering the case for condonation of delay of a substantial/gross nature, as in the present case (see the case of *Esha Bhattachajee V/s.Managing Committee of Ragnathpur Nafar Academy & Ors.*¹).

6. The Hon'ble Supreme Court in the aforesaid decision has *inter alia* held that if the explanation offered is concocted or the grounds urged in the application are fanciful, the Courts should be

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vigilant not to expose the otherside, unnecessarily to face such a litigation. It has further been held that the increasing tendency to perceive delay as a non-serious matter is required to be curbed, of course, within legal parameters.

7. Considering the overall circumstances I do not find that the explanation offered is acceptable. The applicants have failed to make out a sufficient cause for condonation of delay. The application is without any merit and is accordingly dismissed. The registration of the second appeal stands refused.

C.V. BHADANG, J.