

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

**CIVIL APPLICATION NO.5503 OF 2018**  
**IN SAST/9477/2018**

HYDERSAB S/O DASTGIR SHAIKH  
VERSUS  
SUGRABEE W/O ALLABAKSH MANIYAR

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Mr. H. V. Patil, Advocate for applicant.  
Mr. S. S. Choudhary, Advocate for the respondent.

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**CORAM : SMT. VIBHA KANKANWADI, J.**

**Reserved on : 26.08.2021**

**Pronounced on : 02.09.2021**

**ORDER :-**

. Present application has been filed for getting the delay of 1085 days condoned in filing second appeal.

2. Present applicant is the original plaintiff, who had filed Regular Civil Suit No.68 of 2008 (Old Regular Civil Suit No.421 of 2003) before learned Civil Judge Junior Division, Lohara, Dist. Osmanabad for perpetual injunction. The said suit was decreed and the original defendant – present respondent was perpetually restrained from causing obstruction the plaintiff's possession and enjoyment over the suit plot. The original defendant challenged the said judgment and decree by filing Regular Civil Appeal No.31 of 2010 before the learned District

Judge-1, Omerga, Dist. Osmanabad. The said appeal came to be allowed on 20.12.2014 and the decree passed by the learned Lower Court was reversed. The suit was dismissed. The plaintiff want to file the second appeal, however, as aforesaid there is delay. Hence, the present application under Section 5 of the Indian Limitation Act.

3. Heard learned Advocate Mr. H. V. Patil for the applicant and learned Advocate Mr. S. S. Choudhary for the respondent. In order to cut short it can be said that both of them have made submissions in support of their respective contentions.

4. The applicant has contended that after the judgment and decree was pronounced by the Appellate Court he and one Mr. Ramakant Gore, through whom the applicant contacted one Advocate Mr. Rajeshwarkar went to Advocate Rajeshwarkar. Concerned Advocate hand then advised the applicant to file appeal before this Court. The Advocate of the appellant at Omerga had assured the applicant that he would handover all the papers to the Advocate of his acquaintance practicing before this Court. The applicant had given the amount of expenses and fees, so also the Vakalatnama. It is stated that all the documents were given to Advocate Rajeshwarkar in presence of Ramakant Gore. The concerned Advocate hand then suggested that a new suit is required to be filed.

Thereafter, on the said advise, even the applicant had filed Regular Civil Suit No.60 of 2015 on 05.03.2015. It was impressed upon the applicant that the matter would take long time before this Court to appear and, therefore, the applicant kept quiet for sometime. After lapse of time, when he again approached Advocate Mr. Rajeshwarkar, it was told to him that his papers have been sent to Advocate Mr. S. A. P Quadari at Aurangabad. The applicant came to Aurangabad on 26.02.2018 and met concerned Advocate. He was along with Advocate Rajeshwarkar and Ramakant More on that day. He came to know from Advocate Quadari that he has not received the papers and fees and, therefore, Second Appeal has not been filed. Again on the advise given by the Advocates, he obtained certified copies and has filed the appeal. He is a poor mechanic and has no knowledge about the legal proceedings. He has under *bona fide* belief that the Advocate from Osmanabad will take care of his matter. There is no intentional delay on his part. He, therefore, prayed for condonation of delay.

5. It is to be noted that applicant has filed affidavit of Ramakant Rangrao Gore in support of his contention. Under such circumstance, there is no reason to disbelieve the applicant. The applicant himself had taken all the necessary steps and then depended on the legal advice that was given to him by the Advocate. This is a good ground for condoning

the delay. The delay is unintentional, however, the inconvenience that would be caused to the respondent, deserves to be compensated in terms of money. Hence, the following order :-

**ORDER**

- I) Application stands allowed.
- II) The delay caused in filing second appeal is hereby condoned subject to deposit of cost of Rs.5,000/- (Five Thousand only) in this Court within a period of four weeks from today.
- III) After the amount is deposited, registry to verify and register the second appeal.
- IV) The amount so deposited by the applicant be given to the respondent.

**[SMT. VIBHA KANKANWADI, J.]**

scm