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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CIVIL APPLICATION NO.7537 OF 2017
IN
SECOND APPEAL ST.NO.11424 OF 2016

Anand Namdeo Gavli = APPLICANT

VERSUS

Balasaheb Babu Pakhale = RESPONDENT

Mr. RP Adgaonkar & Mr.FK Patel, Advocates for
Applicant;

Mr.KR Doke & Mr.SK Doke, Advocates for Respondent.

CORAM : SMT.VIBHA KANKANWADI,J.
DATE : 6th August , 2021.

PER COURT :-

1. Present application has been filed for getting the delay of 1018 days condoned in filing the Second Appeal.

2. Heard learned Advocate appearing for the respective parties. In order to cut short, it can be stated that both of them have made submissions in support of their respective contentions.

3. Present Respondent is original plaintiff, who had filed a suit bearing RCS No.42/2009 for perpetual injunction before Joint Civil Judge, Junior Division, Washi, district Osmanabad. The suit was decreed. However, it appears that even the present appellant has filed RCA No.183/2012 and the present Respondent-

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defendant has filed RCA No.80/2009 before the learned Principal District Judge, Osmanabad. Both the appeals were dismissed by common judgment on 6.3.2013. The plaintiff intends to file the Second Appeal, challenging the dismissal of his appeal. However, as aforesaid, there is delay of 1018 days.

4. The applicant has contended that due to his illiteracy and ignorance about the legal procedure, he could not approach this Court within limitation. According to him, he had approached the Advocate at Aurangabad with certified copies, however, the Advocate asked him certain documents and on providing those documents, the advocate advised him to prefer an appeal. However, some time was spent by him in collecting the amount that is required to prefer the appeal.

5. Important point to be noted is that, a very vague reason is tried to be given. There are absolutely no particulars as to when the applicant came to know about the decision in the appeal; when he has obtained the certified copies etc. If we peruse the certified copies, those are on record, then it would show that after the judgment was pronounced by the first Appellate Court on 6.3.2013, an application for certified copy was given within two days, i.e. on 8.3.2013 and the copies were received on 25.3.2013 in

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respect of the judgment of the first Appellate Court is concerned. Thereafter, it appears that subsequently, he collected the certified copies of the appeal memo; subsequent thereto, the decree passed by the first Appellate Court etc. That means, at one stroke, he has not approached the concerned Courts to obtain the certified copies of the relevant. There is no reason mentioned as to why he could not have obtained those copies once for all.

6. Another point to be noted is that the present appeal requires only Rs.200/- as court fees. Therefore it is hard to believe the contention of the applicant that he spent much time in collecting the amount required to preferred the appeal. The reasons have been tried to be given only in eight lines and it cannot be seen that those reasons are sufficient and justifiable, much less reasonable, to condone the delay.

7. In view of the above, the application deserves to be rejected and accordingly, it is rejected. Pending Civil Application, if any, stands disposed of.

(SMT. VIBHA KANKANWADI)

JUDGE

BDV