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

**CIVIL APPLICATION NO. 6975 OF 2021
IN
SECOND APPEAL ST.NO.13087 OF 2021
WITH
CIVIL APPLICATION NO. 6976 OF 2021**

1) Vithalrao Govindrao Raosaheb
Died Through L.rs. -

1/1) Chandrabai Vithalrao Raosaheb = **APPLICANTS**

VERSUS

1) The State of Maharashtra,
Through Collector, Nanded
and Ors.

= **RESPONDENTS**

Mr.UB Deshmukh,Advocate for Applicants;

Mr.AM Phule,AGP for Respondent No.1-State;

Mr.AM Suryawanshi, Adv. For Resp.Nos. 4/1 and 4/2.

CORAM : SMT.VIBHA KANKANWADI,J.

DATE : 7th September, 2021.

PER COURT :-

1. Present application has been filed for getting delay of 2054 days, caused in filing the Second Appeal, condoned.

2. The applicants are the original plaintiffs, who had filed a suit for declaration and perpetual injunction. The said suit was dismissed by learned Civil Judge Senior Division,

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Biloli on 19.9.2009. They had then approached the first Appellate court, i.e. District Court, Biloli by filing Regular Civil Appeal No.46/2009. The learned District Judge-1, Biloli, after hearing both sides, has dismissed the said appeal on 2.5.2014. Now, the applicants intend to file Second Appeal, however, as aforesaid, there is delay of 2054 days. Hence, the present application.

3. Heard learned Advocates appearing for the respective parties.

4. It has been vehemently submitted that after they had filed the first appeal, the appellants were required to go to different towns for earning livelihood and, therefore, they had lost touch with their advocate, who was looking after the appeal. The appeal was also pending for about six years for adjudication. After the decision, the appellants' Advocate had tried to communicate the said order to the appellants, however, due to network problem in remote villages where the applicants used to live ordinarily; could

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not establish communication. Finally, when applicant No.1/5 had made telephonic call to the Advocate on 1.3.2021, he came to know about dismissal of their appeal way back on 2.5.2014. The advocate for the applicants submitted that due to poor signal of the mobile network in village Markhel, he could not establish the contact. Thereafter they collected the certified copies and approached this Court. In the meantime, it had also happened that applicant No.1/2, who was ordinarily residing in village Markhel and was looking after the agricultural land of the family, met with an accident and got his leg fractured. The applicants are from rural area and have no legal knowledge and, therefore, they could not approach this Court in time. The learned Advocate further submitted that the delay is unintentional and their civil rights are involved and by taking liberal approach, the delay be condoned.

5. Per contra, learned Advocate appearing for Respondent Nos.4/1 and 4/2, strongly objected the application and submitted that the reason that has been given by the applicants, is absolutely not

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convincing much less reasonable and sufficient. Huge and inordinate delay of 2054 days was supposed to be explained by the applicants. It cannot be imagined that for all those 2054 days, there was absolutely no network to the mobile phones or there were no means to establish communication. None of the applicants had tried to go to the concerned Advocate physically and get the stage of the appeal enquired. The distance between Markhel and Biloli, where the appellate Court is established, is only 40 kms. He, therefore, submitted that the application should be dismissed.

6. Learned AGP also prayed for dismissal of the application.

7. At the outset, it can be seen that when there is a huge and inordinate delay, then it should be explained by some cogent, sufficient and reasonable ground. Originally, the suit appears to have been filed by four persons. However, during pendency of the suit itself, original plaintiff Nos.1 and 2 expired and their heirs have been brought on record. So, there were about 8 male

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members and 2 ladies on record. The youngest amongst them was 40 years old. All of them have given their residential address as Markhel, Tq. Degloor, District Nanded. Only a vague statement has been made that for livelihood, they had gone to different towns to earn. Intentionally, the names of the villages/towns and the period they had gone there, has not been given. Now, as regards Applicant No.1/2 is concerned, it has been tried to be submitted that he had met with the accident and got his leg fractured. When that accident has taken place, has not been stated. No documentary evidence about he possessing the fracture, has been produced on record. Therefore, that reason also cannot be appreciated in its proper perspective.

8. The main reason that has been projected is, poor network of the mobile connectivity. At the outset, it is to be noted that they have not given the name of the Advocate, who was trying to establish contact with them. They have not given mobile numbers of some of the applicants just to support their contention that they were possessing the mobile phones. Even if we consider that same

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Advocate, who was representing them before the first Appellate Court, was trying to establish the contact; yet it cannot be accepted that for all 2054 days, there would have been network problem. Another fact is, if there was mobile network problem at their village Markhel, then they could have gone to the Post office or any other such place where landline telephone is there and from the landline phone, they could have definitely established contact with their advocate on his mobile. So, the reason assigned is totally unbelievable, unreasonable much less sufficient to condone huge and inordinate delay of 2054 days. Hence, the application for condonation of delay stands rejected. Pending civil application, if any, stands disposed of.

(SMT. VIBHA KANKANWADI)
JUDGE

BDV