

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

**CIVIL APPLICATION NO. 10334 OF 2018
IN
SECOND APPEAL ST. NO.16558 OF 2018**

Shevantabai W/o Santram Pingale = **APPLICANT**

VERSUS

Bhaguram s/o Nivaratti Kasale = **RESPONDENT**

Mr.RP Adgaonkar,Advocate for Applicant;

Mr.Ameya N.Sabnis, Advocate for Respondent

CORAM : SMT.VIBHA KANKANWADI,J.

DATE : 24th August, 2021.

PER COURT :-

1. Present application has been filed for getting delay of 347 days condoned in filing the Second Appeal.

2. Heard learned Advocates 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 applicant is original plaintiff who had filed RCS No.413/2006 before the Civil Judge, Junior Division, AUSA, District Latur for declaration of ownership and possession of the suit house. The said suit came to be dismissed on

15.4.2010.

4. The original plaintiff intended to file first appeal, however, there was delay of 2218 days and, therefore, she filed Civil Misc. Application (Delay) No.101 of 2016. Learned District Judge-4, Latur, rejected the application on 15.3.2017. The ground for getting the delay condoned before the first Appellate Court was illiteracy and poor financial condition, which was not accepted by the first Appellate Court to be a reasonable ground much less sufficient to condone the huge delay of 2218 days. Now, in order to challenge that order, she wanted to file Second Appeal. However, there is delay of 347 days. She is coming with the same reason that she is poor, old age and illiterate lady, having no source of income.

5. It will not be out of place to mention here that it has come on record that prior to filing of RCS No.413/2006, the present applicant-plaintiff had filed RCS No.35/1997 with the same reliefs. She did not prosecute that suit and it was dismissed. Thus, it can be seen that the applicant cannot be said to be a lady, who has no knowledge about as to how the suit is filed and how it is prosecuted. In fact, she is filing the litigation and not pursuing the same or she has intentionally committed the delay. Every time, illiteracy cannot be a good ground for getting the delay condoned. As regards old age is concerned,

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in fact, the respondent is more old than her. Further, when once she had already committed huge delay then it was expected that she should be diligent enough in proceeding with the application before the first Appellate Court. The applicant is not coming with a case that she was not aware about or she was not informed about the decision of the first Appellate Court. Then in spite of knowledge if she fails to take proper steps within limitation, then such deliberate delay cannot be condoned. The application has not been filed with bonafide intention. It deserves to be dismissed. Accordingly, it is dismissed.

(SMT. VIBHA KANKANWADI)
JUDGE

BDV