

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

919 CIVIL APPLICATION NO.5326 OF 2021
IN SAST/20414/2019

UTTAM APPASAHEB GADE

VERSUS

RAKHEMAJI RAMCHANDRA BANGAL, DEAD, THROUGH LR SANGEETA
SHIVAJI KARALE @ BANGAL

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Mr. M.L. Deoda, Advocate h/f Mr. A.D. Ostwal, Advocate for the applicant
Mr. R.B. Temak, Advocate for the sole respondent

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CORAM : SMT. VIBHA KANKANWADI, J.

DATE : 01st OCTOBER, 2021

PER COURT :

- 1 Present application has been filed for condoning the delay of 132 days in filing Second Appeal.
- 2 Heard both sides.
- 3 Present applicant is the original plaintiff, who had filed suit bearing Regular Civil Suit No.607/2011 for recovery of arrears of rent and possession. It has been observed by the Trial Court that since the area, in which the suit property is situated, is not notified in Schedule I or II of the

Maharashtra Land Control Act, it was considered that the suit was under the provisions of Transfer of Property Act. The suit came to be dismissed on 03.03.2016. He preferred Regular Civil Appeal No.186/2016 before District Court, Ahmednagar. The appeal was heard by learned Adhoc District Judge-5, Ahmednagar and was dismissed on 26.11.2018. The applicant intends to file the Second Appeal, however, there is delay of 132 days. Hence, this application.

4 It has been contended by the applicant in a long drafted application that his Advocate did not inform the decision of the First Appeal and, therefore, immediately after the pronouncement of the Judgment of the First Appellate Court he had no knowledge about the said decision. Later on he came to know about the said decision and then he applied for the certified copies. Thereafter, he was suffering from heart disease, hypertension and diabetes with left ventricular failure. He was hospitalized and was advised bed rest for at least three months with specific advise of not to travel. Though the learned Advocate appearing for the respondent is strongly opposing and submitting that all the documents are of the subsequent period, that too, after the appeal period would have been over, those documents cannot be considered and the said reason on the medical ground cannot be considered at all. The fact remains that for the initial period the applicant is

claiming that he had no knowledge about the decision of the First Appellate Court and thereafter he states that he was ill. Taking liberal view and the duration of the delay, the delay stands condoned.

5 Application stands allowed and disposed of, subject to deposit of costs of Rs.3,000/- (Rupees Three Thousand only), to be deposited within a period of 15 days from today.

6 After the deposit of the said amount, registry to verify and register the Second Appeal and the amount be disbursed to the respondent.

(Smt. Vibha Kankanwadi, J.)

agd