

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

914 CIVIL APPLICATION NO.11333 OF 2016
IN SAST/24382/2016

DIGAMBER MAROTI KAITAMWAD AND ANR
VERSUS
GOVIND MAROTI KAITAMWAD

...
Advocate for Applicants : Mr. Shinde Ganesh P.
Advocate for Respondent : Mr. Bhosle Santosh C.
...

CORAM : SMT. VIBHA KANKANWADI, J.

DATE : 22.10.2021

ORDER :-

1. Present application has been filed for getting the delay of 441 days condoned in filing second appeal. Present applicants are the original plaintiffs. They had filed Regular Civil Suit No.132 of 2007 before learned Civil Judge Junior Division, Bhokar for declaration of ownership and permanent injunction. The said suit came to be dismissed on 09.12.2009. They had filed Regular Civil Appeal No.54 of 2010 (Old No.4/2010) before the learned District Judge-1, Bhokar, Dist. Nanded. The said appeal came to be dismissed on 21.02.2015. Hence, they want to file second appeal, however, there is delay.

2. Heard learned Advocate Mr. G. P. Shinde for the applicants and learned Advocate Mr. S. C. Bhosle for the respondent.

3. The applicants contended that after the judgment was delivered by the learned first Appellate Court, its result/decision was not communicated by the Advocate representing them before the first Appellate Court and then the applicant says that in the month of June, 2016, when they inquired about the status of their appeal, their Advocate informed them that it has been dismissed.

4. It is to be noted that the applicants have not supported their application with the affidavit of the Advocate to establish the fact that there was no communication made by the learned Advocate to them. Another fact is that the applicants have not given good reasons as to why they were not in contact with their Advocate for a considerable long time. The delay of 441 days is huge, however, taking into consideration the fact that the parties are coming from rural area and the property rights appear to be involved, the delay deserves to be condoned with heavy cost in order to compensate the respondent. Hence, the following order :-

ORDER

I) Application stands allowed and disposed of.

II) The delay caused in filing second appeal stands condoned, subject to deposit of cost of Rs.8,000/- in this Court within a period of one month.

III) After the amount is deposited, registry to verify and register the second appeal.

IV) The amount so deposited be given to the respondent.

[SMT. VIBHA KANKANWADI, J.]

scm