

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

**948 CIVIL APPLICATION NO.10327 OF 2019**  
**IN SAST/25784/2019**

GADDUBAI RAMVALLABH VARMA THRO. GENERAL POWER OF  
ATTORNEY HOLDER, BRIJMOHAN RAMVALLABH VARMA  
VERSUS  
ABDUL HAMID ABDUL SATTAR AND ANOTHER

...  
Advocate for Applicant : Mr. Waramaa B.R.  
Advocate for Respondent No.2 : Mr. A. B. Kharosekar  
...

**CORAM : SMT. VIBHA KANKANWADI, J.**

**DATE : 23<sup>rd</sup> February, 2021**

**ORDER :-**

1. Present application has been filed for condoning the delay of 745 days in filing second appeal.

2. Heard both sides and perused the say that has been filed by respondent No.2. It will not be out of place to mention here that respondent No.1 though served, remained absent.

3. The applicant contends that she intends to file the second appeal. When the matter was before first Appellate Court, she had appointed one Advocate Mr. Vaidya from Nanded to defend her. She being the old lady, had health problems and she states that since beginning she had

appointed general Power of Attorney i.e. her own son and she was depending on the son. She lost her contact with the Advocate after he was appointed as Government Pleader. By engaging another lawyer, she secured the certified copies on 21.01.2019 and, thereafter, she has approached this Court. She states that the delay is unintentional and if it is not condoned, then she would suffer loss.

4. The application has been objected by respondent No.2 stating that the delay is inordinate and shows careless attitude of the appellant.

5. Present respondents are the original plaintiffs who had filed Regular Civil Suit No.176 of 2008 before the Joint Civil Judge Junior Division, Nanded for refund of the earnest amount. It came to be dismissed on 21.02.2011. Thereafter, the appellants approached the District Court by filing Regular Civil Appeal No.36 of 2011. The appeal came to be allowed on 03.05.2017. The suit came to be decreed and now, she intends to file the second appeal.

6. Taking into consideration the reasons mentioned in paragraph No.3, liberal approach is required to be taken. Taking into consideration the fact that the applicant is an illiterate lady aged around 60 years, though some part of the reasons are not convincing as there is absolutely no reason as to why the Power of Attorney of the applicant could not

take part in the further legal proceedings and the delay has not been explained from his point of view and still the applicant has come before this Court through same Power of Attorney, yet, as aforesaid, liberal approach is taken. The inconvenience that would be caused to respondent No.2, who is the only contesting party, the balance would be struck and, therefore, following order is passed.

**Order**

- I) Application stands allowed.
- II) The delay caused in filing second appeal stands condoned subject to deposit of cost of Rs.7,000/-(Seven Thousand) before this Court within a period of three weeks from today.
- III) After the amount is deposited, registry to verify and register the second appeal.
- IV) The amount deposited is allowed to be withdrawn by respondent No.2.

**[SMT. VIBHA KANKANWADI, J.]**

scm