

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

**CIVIL APPLICATION NO.5439 OF 2019
IN SAST/28869/2017**

**CHANDRAKALA NAGNATH LOMTE
VERSUS
NARSING SAMBHA MORE AND OTHERS**

...

Mr. B.A. Shinde, Advocate for the appellant
Mr. S.J. Salgare, Advocate for respondent Nos.2 to 7

...

WITH

**CIVIL APPLICATION NO.5441 OF 2019
IN SAST/28864/2017**

**NAGNATH JAGANNATH LOMTE
VERSUS
NARSING SAMBHA MORE AND OTHERS**

...

Mr. B.A. Shinde, Advocate for the appellant
Mr. S.J. Salgare, Advocate for respondent Nos.2 to 7

...

CORAM : SMT. VIBHA KANKANWADI, J.

RESERVED ON : 24th AUGUST, 2021

PRONOUNCED ON : 07th SEPTEMBER, 2021.

ORDER :

1 Both these applications have been filed for getting delay of 536 days condoned in filing Second Appeal. The applicants in both the matters are husband and wife. They were the original plaintiff in Regular Civil Suit No.79/2002 and Regular Civil Suit No.81/2002 respectively, which were before Joint Civil Judge Junior Division, Tuljapur, Dist. Osmanabad for permanent injunction. Both the suits came to be decreed. In both the suits, the subject-matter i.e. lands were different, however, the defendants were same. Original defendants then preferred Regular Civil Appeal No.138/2013 and Regular Civil Appeal No.137/2013 challenging the respective decrees. The said appeals were heard by learned District Judge-3, Osmanabad and both the appeals were allowed, thereby quashing the Judgment and Decree passed by the Trial Court. Both the applicants now want to challenge the said Judgments and Decrees passed by the First Appellate Court, however, there is delay of 536 days. Hence, these applications.

2 Heard learned Advocate Mr. B.A. Shinde for both the applicants. Learned Advocate for the respondent Nos.2 to 7 was absent.

3 Both the applicants have contended that though the First Appellate Court had pronounced the Judgment on 10.12.2015, their

Advocate had intimated the said decision to them in the month of September, 2016, when the applicant had visited his office to make inquiry regarding the status of the appeal. Thereafter, they obtained the certified copies and approached the Advocate at Aurangabad. After considering the documents tendered by the applicants, their Advocate at Aurangabad asked them to get more certified copies and, therefore, further time has been consumed to get the certified copies. Both the applicants say that they are old and poor. Due to the drought situation their financial position has become weak. This is also the ground for condonation of delay, as they could not raise appropriate funds.

4 At the outset, it is to be noted that there is nothing on record to support the contention of the applicants that though the Judgment was pronounced on 10.12.2015, their Advocate gave intimation about the same, that too, it appears orally in September, 2016. No supporting affidavit of the concerned Advocate has been filed to state that he had not informed the decision to the applicants. However, in view of the decision relied by the learned Advocate for the applicants in **Collector, Land Acquisition, Anantnag and another vs. Mst. Katiji and others, (1987) 2 SCC 107**, wherein Hon'ble Supreme Court has given guidelines for taking liberal approach and when the Advocate appears to have not complied with his duty, so also, due to the poor

condition of person coming from rural area is required to be considered; sufficient ground has been shown to condone the delay. Both the applications stand allowed and disposed of. Registry to verify and register the Second Appeals and placed them for admission on 04.10.2021.

(Smt. Vibha Kankanwadi, J.)

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