

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

916 CIVIL APPLICATION NO.5952 OF 2020
IN SAST/30469/2018

M/S NARSIMHA CONSTRUCTION PVT. LTD. THRO.
MANAGING DIRECTOR- MOHAN KASHINATHRAO KALE
VERSUS
THE STATE OF MAHARASHTRA THRO. COLLECTOR, BEED
AND OTHERS

...

Advocate for Applicant : Mr. Singh J.N. ;
Mr. BV Virdhe, AGP for Respondent No.1-State;
Respondent Nos. 1-a to 1-C are served.

CORAM : SMT.VIBHA KANKANWADI, J.
DATE : 26th August, 2021.

PER COURT :-

1. Present application has been filed for getting delay of 379 days condoned in filing the Second Appeal.
2. Present applicant is original plaintiff, who had filed Special Civil Suit No.28 of 2005 before the Civil Judge, Senior Division, Beed for recovery of amount. The said suit came to be partly decreed on 1.7.2006. The present respondents original defendants filed RCA No.107/2012 (Old First Appeal No. 645/2007). That appeal came to be allowed by learned District Judge-5, Beed on 21.6.2017, thereby dismissing the suit. Hence, the plaintiff intends to file the Second Appeal, however, as aforesaid, there is delay of 379 days.
3. Heard learned Advocate appearing for the applicant-company.
4. The main contention of the applicant is, though the

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learned first Appellate Court had pronounced the judgment on 21.6.2017, the fact was not informed by the Advocate, who was representing the applicant before the first Appellate Court. It is also contended that the applicant company had given a letter to the concerned Advocate on 14.9.2018, regarding not informing it about the judgment and it was also stated that the letter contained the statement that the Company would initiate legal proceedings against the Advocate. It is also stated in that letter itself that the Company to ask the said Advocate to compensate the losses suffered by the company on account of non-intimation about the judgment of the first Appellate Court and also stated that the company would initiate the proceedings regarding misconduct against the Advocate.

5. When enquiry has been made with the learned Advocate appearing for the applicant – company as to whether any proceedings for misconduct have been taken up against the concerned Advocate or not, he says that he has not taken instruction. This attitude is absolutely not proper. When submissions are made then the position as on today, should be within the knowledge of the learned Advocate. He cannot claim ignorance now.

6. The applicant company has taken up a defence that it was not aware about the decision and has come with a case that in the 2nd week of September, 2018, when the Managing Director of the Company instructed to its staff about pendency of legal proceedings, they found it on the internet that the appeal has been dismissed. The applicant company is not stating that some of its employees, especially, the Managing Director, was in contact with the Advocate and also keeping track of the appeal, as they could find out from the internet in September 2018 about dismissal of the appeal. They could have found it out even earlier

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also. However, any way, taking into consideration the duration of the delay, it deserves to be condoned. However, inconvenience that would be caused to the State, deserves to be compensated in terms of money. Hence, the following order, -

ORDER

- i. The application stands allowed and disposed of;
- ii. The delay caused in filing the Second Appeal stands condoned subject to deposit of costs of Rs.10,000/- within a period of one month from today.
- iii. After the amount is deposited, Registry to verify and register the Second Appeal and cost amount be credited to the Government.

(SMT. VIBHA KANKANWADI)
JUDGE

BDV