

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

923 CIVIL APPLICATION NO.2576 OF 2015
IN SAST/31425/2014

RAHIMAN NIYAMAN
VERSUS
TAIMURKHA FAKIRKHAN PATHAN AND OTHERS

...
Advocate for Applicant : Mr. Shinde Ashish B
Advocate for Respondent Nos.1 to 3 : Mr. Adv. S. G. Chapalgaonkar
...

CORAM : SMT. VIBHA KANKANWADI, J.

DATE : 04.08.2021

ORDER :-

. Present application has been filed for getting the delay of 313 days condoned in filing second appeal.

2. Heard learned Advocate Mr. A. B. Shinde for the applicant and learned Advocate Mr. S. G. Chapalgaonkar for respondent Nos.1 to 3.

3. Learned Advocate for the applicant has made submissions in support of the application.

4. Learned Advocate for the respondent strongly opposed the application and submitted that no proper much less sufficient reasons have been assigned to condone the delay. When, in fact, the applicant had received the certified copies within time, he could not have come

with the theory or submission that due to financial condition, he could not file the appeal within limitation.

5. It is to be noted that the suit filed by the present applicant was for injunction, which came to be dismissed and his appeal has already been dismissed by the learned first Appellate Court. The applicant was required to pay only amount of Rs.200/- as Court fee. Therefore, it cannot lie in the mouth of the applicant that he could not make arrangements for filing of the appeal. No doubt, there would be furthermore expenses such as typing and Advocate's fee, but the learned Advocate for the applicant could have given some concession and could have recovered it later from his client by filing the appeal within limitation. Under such circumstance, though the reason that has been vaguely given may not be appealing, but taking into consideration the fact that the applicant is an agriculturist, coming from rural area, liberal approach is required to be taken. The inconvenience that has been caused to the respondents, deserves to be compensated in terms of money. Hence, the delay stands condoned.

6. Accordingly, application stands allowed and disposed of.

7. Applicant to deposit cost of Rs.3,000/- within a period of 15 days from today in this Court.

8. After the cost is deposited, registry to verify and register the second appeal and place it for further consideration on 23.08.2021.
9. Respondents are at liberty to withdraw the amount that would be deposited.

[SMT. VIBHA KANKANWADI, J.]

scm