

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

**CIVIL APPLICATION NO.10771 OF 2016
IN SAST/33997/2015**

NIVRUTTI BALBHIM DIVANE, DIED, HENCE DELETED, AND OTHERS
VERSUS

SATYABHAMABAI W/O MARUTI DIVANE

...

Mr. A.N. Nagargoje, Advocate for applicants

Mr. M.B. Kolpe, Advocate for the sole respondent

...

CORAM : SMT. VIBHA KANKANWADI, J.

RESERVED ON : 13th AUGUST, 2021.

PRONOUNCED ON : 24th AUGUST, 2021

ORDER :

1 Present application has been filed for getting delay of 1033 days condoned in filing Second Appeal. Present applicants are the original defendants, who want to challenge the Judgment and Decree passed by learned Principal District Judge, Osmanabad in Regular Civil Appeal No.246/2007 dated 22.10.2012, thereby reversing the Judgment and Decree passed by learned Civil Judge Junior Division, Kallam in Regular Civil Suit No.36/1988 dated 28.02.2007.

2 Heard learned Advocate Mr. A.N. Nagargoje for applicants and

learned Advocate Mr. M.B. Kolpe for the sole respondent.

3 Learned Advocate for the respondent has strongly opposed the application and submitted that the delay is huge and no sufficient reasons have been given for condoning.

4 The applicants are contending that after the decision by the First Appellate Court, they came to know about the said only in the month of April, 2013 and accordingly made application for the certified copies. It is contended that since the dispute was about consolidation record and the appeal was allowed on the basis of consolidation record, they were under confusion, as to whether they should proceed with the litigation before the Consolidation Officer, which they had already filed or they would file the Second Appeal before this Court. Ultimately they got legal advice in the month of December, 2014 that they would be required to file the Second Appeal. Thereafter, they had come to Aurangabad, handed over the papers to the learned Advocate, however, thereafter the said Advocate joined the Judicial Services and could not file their appeal. The applicants were not aware about the said fact and they were under the impression that the appeal might have been filed. They came to know in the last week of October, 2015 that the appeal has not been filed and their Advocate has joined the Judicial Services. Then the applicants took the papers and gave it to the new

Advocate, who took some time further to file the appeal. The delay is unintentional. They have good case on merits.

5 The learned Advocate appearing for the applicants in nutshell tried to say that there are contrary Judgments of the Lower Courts below and the learned Principal District Judge, Osmanabad while deciding the First Appeal has passed a very cryptic Judgment, which cannot be said to be within the parameters of Order_XLI Rule 33 of the Code of Civil Procedure, 1908.

6 Though the reasons, those have been tried to be given by the applicants, are not convincing in a sense that many lacunas or time gap has been left by them, however, it can be seen from the prima facie perusal of the Judgment in the First Appeal that it proceeded merely on the basis of consolidation record. Further, in the written statement itself the present applicants had taken a contention that they have taken objection before the Consolidation Officer, regarding the implementation of the consolidation scheme. Under such circumstance, they would be justified in taking opinion, as to whether they would go ahead with the litigation they have already filed before consolidation officer or would take further steps to challenge the Judgment and Decree passed by the First Appellate Court. But then after they had handed over the papers to the Advocate, it is stated by them that

their Advocate joined the Judicial Services. According to them, they were not informed about the said fact by then said Advocate. But then there is gap between December, 2014 to October, 2015, in which they had not made any inquiry about the progress in their appeal. Yet, taking into consideration the liberal approach as the rights in the immovable property have been agitated, the delay deserves to be condoned. However, at the same time the inconvenience that is caused to the other side is required to be well compensated in terms of money. Hence, following order.

ORDER

- 1 Application stands allowed and disposed of.
- 2 The delay caused in filing Second Appeal stands condoned, subject to deposit of costs of Rs.30,000/- (Rupees Thirty Thousand only), in this Court, within a period of one month from today.
- 3 After the amount is deposited the Registry to verify and register the appeal.
- 4 The amount, so deposited, be given to the respondent.

(Smt. Vibha Kankanwadi, J.)