

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

913 CIVIL APPLICATION NO.8518 OF 2018
IN SAST/40053/2017

BHIMABAI VITHAL GARJE

VERSUS

SADASHIV KESHAV GITE AND OTHERS

...

Mr. R.K. Jadhavar, Advocate for the applicant

Mr. N.P. Bangar, Advocate for respondent Nos.1 to 3

...

CORAM : SMT. VIBHA KANKANWADI, J.

DATE : 01st OCTOBER, 2021

ORDER :

1 Present application has been filed for getting delay of 285 days in filing Second Appeal condoned.

2 Heard both sides. In order to cut short, it can be said that they have argued in support of their respective contentions.

3 Applicant is the original plaintiff, who had filed Regular Civil Appeal No.916/2011 before Joint Civil Judge Junior Division, Ashti, Dist. Beed. The said suit came to be decreed on 30.03.2016. The original defendant Nos.1 to 3 preferred Regular Civil Appeal No.74/2016. It was

decided by learned Adhoc District Judge-1 Beed on 21.11.2016. The appeal came to be allowed and the decree passed by the Trial Court was set aside by dismissing the suit. Hence, the original plaintiff filed the present application. She intends to file Second Appeal, however, there is delay, as aforesaid. Though the learned Advocate for the respondent Nos.1 to 3 is strongly opposing, the fact remains that the applicant was claiming right over immovable property. She has stated that she was ill due to old age i.e. 65 years and was unable to take up the travelling. She also states that she took time to collect the amount. Taking liberal view, the delay deserves to be condoned. However, the inconvenience that would be caused to the respondent Nos.1 to 3 deserves to be compensated in terms of money.

4 Another fact, that is, required to be noted, at this stage itself, is that the suit was filed against four persons. Respondent No.4 appears to have expired when the suit was before the Trial Court. Legal representatives of defendant No.4 were not brought on record and the suit stood abated against him. What would be the effect of such abatement will have to be considered at the time of admission of the Second Appeal.

5 The application for condonation of delay stands allowed.

6 The delay caused in filing Second Appeal stands condoned,

subject to deposit of costs of Rs.6,000/- (Rupees Six Thousand only), within a period of one month from today.

7 After the costs is deposited, registry to verify and register the Second Appeal.

8 The amount, so deposited, be distributed to the respondent Nos.1 to 3, equally.

(Smt. Vibha Kankanwadi, J.)

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