

Santosh

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

**CIVIL APPLICATION NO. 3330 OF 2019
IN
FIRST APPEAL (ST) NO. 19057 OF 2019**

Vasant Govindrao Wagh

...Applicant/
Appellant

Versus

Gangadhar Damodar Bhurkule & ors.

...Respondents

Mr. Milind M. Sathye, for the Applicant/Appellant.

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CORAM: N. J. JAMADAR, J.

DATED : 26th NOVEMBER, 2021

PC:-

1. This application is preferred to condone the delay of one year and six days in filing the appeal against the judgment and decree in Special Civil Suit No.597 of 2009, dated 27th February, 2018, passed by the learned Senior Judge, Senior Division, Nashik, whereby the suit instituted by the plaintiff came to be partly decreed.

2. The office report indicates that respondent nos.1 and 3 have been duly served. Postal acknowledgment qua respondent no.2 was awaited.

3. Mr. Sathye, the learned Counsel for the applicant has filed an affidavit-of-service, today. It indicates that respondent nos.2

and 3 have been served by hand delivery. Acknowledgment is annexed to the affidavit.

4. The principal reason assigned in the application for condonation of delay is the invocation of the jurisdiction of a wrong forum by the appellant in preferring an appeal against the impugned judgment and decree before the District Court, Nashik, being Civil Appeal No.60 of 2018, which was filed on 7th April, 2018. Subsequently, the appeal came to be withdrawn in terms of the order passed by the District Court on 24th April, 2019. Hence, there was delay in preferring the instant appeal before this Court.

5. The applicant has ascribed reasons in the application, especially in paragraph 12, which make out a sufficient cause for condonation of delay. In any event, there is no want of *bona fide* or deliberate inaction on the part of the applicant. The averments in the application are supported by the copies of orders passed by the District Court as well as this Court in Miscellaneous Civil Application No.258 of 2018.

6. It is trite that an application for condonation of delay receives liberal consideration so as to advance the cause of substantive justice. In the instant case, the applicant has made out sufficient cause for condonation of delay. Thus, in order to

advance the cause of substantive justice, the application deserves to be allowed.

7. Hence, the following order:

: O r d e r :

- (i) The application stands allowed.
- (ii) The delay in preferring the appeal stands condoned.
- (iii) The appeal be registered.

[N. J. JAMADAR, J.]