

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

**910 CIVIL APPLICATION NO.3835 OF 2020
IN SAST/8732/2019**

**JANARDHAN GOVIND GAIKWAD
VERSUS
GOVIND SANTRAM GAIKWAD AND OSTHERS**

...

Advocate for Applicant : Mr. Patil Hanmant V.
Advocate for Respondents : Mr. Rahul V. Patil.

**CORAM : MANGESH S. PATIL, J.
DATE : 09.02.2022.**

PER COURT :

This is an application under Section 5 of the Limitation Act, 1963 by the original plaintiff for condonation of delay of 424 days in filing the second appeal.

2. I have heard learned advocates of both the sides.

3. Learned advocate Mr. Patil for the applicant/appellants submits that the application contains the details of the particulars which prevented him from filing the second appeal in time. He submits that there was communication gap. He is a poor agriculturist having no source of income which cumulatively had the effect of causing the delay which is neither intentional nor deliberate. Since the dispute pertains to the right to immovable property, his valuable right would be defeated if he is unable to fetch the decision on merits.

4. Learned advocate for the respondents referring to the affidavit in reply submits that the ground being put forth by the applicant is not believable besides being false. The applicant was very well present when the appellate court pronounced the judgment. In spite of that he failed to

apply for certified copies in time. Even after obtaining the certified copy he failed to take prompt steps in filing the appeal. There is no proper explanation furnished for the intervening period of five months and in similar set of facts the Supreme Court in the matter of **Majji Sannemma @ Sanyasirao vs Reddy Sridevi; 2021 SCC Online SC 1260** has refused to condone the delay in absence of sufficient cause.

5. I have carefully appreciated the rival submissions and perused the papers. It is a matter of record that the applicant is the original plaintiff who has filed a suit for partition and separate possession of his share. However, he has been refused any share recording a finding of there being an antecedent partition. The fact remains that he has been fighting for his share in the suit properties which at least at some point of time were joint family properties.

6. True it is that there is a delay of more than 400 days. Assuming for the sake of arguments that the applicant had knowledge regarding pronouncement of the judgment by the appellate court, he was not to gain anything by allowing his right to prefer the appeal get defeated by efflux of time. At least there is nothing on the record to show that the delay was intentional or deliberate. Time and again the Supreme Court in catena of judgments has laid down the parameters which should weigh with the Courts in such matters. The delay has to be deliberate, intentional or occasioned *mala fide*, if it is refused to be condoned. Applying these parameters, to my mind, for the reasons mentioned in the application, the delay deserves to be condoned subject to a direction to pay costs to compensate the respondents.

7. The decision in the matter of **Majji Sannemma @ Sanyasirao (supra)** referred to by the learned advocate for the respondent was rendered apparently in the peculiar facts and circumstances obtaining before the Supreme Court where there was absolutely no explanation given for the

delay of 1011 days. In the matter in hand at least some attempt has been made by the applicant to furnish some explanation and even the delay is not as inordinate as was the case before the Supreme Court.

8. The application is allowed subject to the applicant depositing costs of Rs. 5000/- in this Court within a period of three weeks. On such costs being deposited, Second Appeal be registered. The respondent No. 1 is entitled to receive the costs.

(MANGESH S. PATIL, J.)

mkd/-