

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

940 CIVIL APPLICATION NO.2584 OF 2018
IN FAST/33100/2017

BHAVDU YADAV SHINDE AND ANR
VERSUS
BHIMRAO SUNDARRAO KALE AND ANR

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Advocate for Applicants : Mr. S.S. Dargad h/f. Deshmukh Mohit R.
Advocate for R/1 : Mr. V.G. Deshmukh h/f. Tope Sambhaji S. Tope Sambhaji S.
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CORAM : Y.G. KHOBRAGADE, J.
DATE : 11th November, 2022

PC.:-

1. Heard advocate Mr. S.S. Dargad h/f. M.R. Deshmukh learned counsel appearing for the applicants, advocate Mr. Deshmukh h/f. Mr. Tope learned counsel appearing for non-applicant no.1 at length.
2. The applicants have filed present application under Section 5 of the Limitation Act and prayed for condonation of delay of 237 days caused while lodging appeal against judgment and award dated 10.11.2016 passed in M.A.C.P No.418/2013 by the M.A.C.T., Aurangabad.
3. The learned counsel appearing for the applicants vehemently canvassed that on 10.11.2016 the learned Tribunal passed the judgment and award, however, on 14.03.2017 their counsel filed an application for grant of

certified copy and on the same day it was received, however, their counsel did not inform them about receipt of certified copy and when they contacted their counsel they filed present application along with appeal for which delay has been caused, which is not intentional but it is *bona fide* and substantial.

4. Per contra, the learned counsel appearing for the non-applicants strongly resisted the application on the ground that no *bona fide* and substantial reasons are assigned by the applicants, hence prayed for rejection of the same.

5. It is trite settled position of law that no litigant should be deprived from receiving substantial justice on the technical ground and discretionary powers provided under Section 5 of the Limitation Act came to be exercised by the Court while imparting justice. In the case in hand, the applicants submitted that though the certified copy of the judgment and award dated 10.11.2016 was received on 14.03.2017, however, due to want of proper legal advice they could not file the appeal within the statutory period and the delay is caused which appears to be *bona fide* and substantial. Therefore, considering the nature of the claim, I am inclined to condone the delay of 237 days caused while lodging the appeal. However, at the same time due to inaction on the part of the applicants no statutory right can be confirmed against the non-applicants. Hence, the applicants would not be

entitled for the interest on the delayed period. In view of above discussion, I am inclined to grant the present application and proceed to pass the following order:

ORDER

- I) The application for condonation of delay is hereby allowed.
- II) The delay of 237 days in filing the appeal is hereby condoned.
- III) The applicants shall not be entitled for the interest on the delayed period.
- IV) The Registry is directed to register the first appeal and place it before the Court for further action.

[Y.G. KHOBRADE, J.]