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

**906 CIVIL APPLICATION NO.14277 OF 2019
IN SAST/33688/2019**

Devidas Zagdu Koli .. Applicant

Versus

Subhash Sravan Koli .. Respondent

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Advocate for Applicant : Mr. Prakashsing B. Patil

Advocate for Respondent : Mr. Girish Rane

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WITH

**CIVIL APPLICATION NO.14278 OF 2019
IN SAST/33688/2019**

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WITH

**907 CIVIL APPLICATION NO.14308 OF 2019
IN SAST/33694/2019**

Devidas Zagdu Koli .. Applicant

Versus

Subhash Sravan Koli .. Respondent

...

Advocate for Applicant : Mr. Prakashsing B. Patil

Advocate for Respondent : Mr. Girish Rane

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CORAM : MANGESH S. PATIL, J.

DATE : 19-01-2022

PER COURT :

. In fact these are two separate applications for
condonation of delay of 178 days caused in filing separate appeals in

respect of the selfsame dispute arising out of passing of a decree by the trial court.

2. Heard both the sides.

3. Mr. Patil, learned advocate for the applicants submits that the applicants are the original defendants, who had purchased the suit properties from the father of the respondent and without challenging the transfers straightway a decree for partition has been obtained. There was a communication gap. The learned advocate, who was appearing for the appellant, did not inform the decision of the first appellate court to the appellant. He resides in a remote village. For all these reasons the delay has occasioned. There are no *mala fides*. Valuable right over the immovable property would be lost by sheer technicalities and he, therefore, prays to condone the delay.

4. Mr. Rane, learned advocate for the respondents strongly opposes the applications. He submits that the very ground about the applicants having received knowledge about the decision of the first appellate court on 01-10-2019 can be falsified from the fact that they were already served with a notice of the execution proceeding and even they had put in appearance on 07-09-2019. He would then submit that these are not the days where there could be any

communication gap because of the remoteness of the location. The appellants had been negligent throughout. They did not contest the suit and even there was a delay in filing the first appeal. It is only after the respondents filed the first appeals being aggrieved and dissatisfied by not decreeing the suit wholly that the appellants chose to file these appeals. The conduct of the appellants demonstrates that they are not prompt enough and do not deserve any discretionary relief.

5. Having considered the rival submissions made by the learned advocate appearing for the respective parties and perusal of the record, one need to bear in mind the well settled principles recognized by the Supreme Court time and again in the matters of condonation of delay. One need only to refer to some of such judgments in the matters of **Collector Land Acquisition, Anantnag & Anr. Vs. Mst. Katiji & Ors; 1987 SCR (2) 387** and **Ramlal, Motilal and Chhotelal Vs. Rewa Coalfields Ltd; 1962 SCR (3) 762.**

6. Having considered the facts of the matter, it does appear that the appellants have not been prompt since inception. They did not make any attempt to contest the suit, even there was a delay in preferring the appeal before the district court and again there is a delay of 178 days in filing the present appeals.

7. It is also apparent that since they had already appeared in the execution proceeding on 07-09-2019, the statement in the applications that they got the knowledge about passing of the judgment by the appellate court on 01-10-2019 is factually incorrect.

8. But then, it is trite that in order to refuse the discretionary relief of the nature being prayed for, there should be something to demonstrate *mala fides* on the part of the party. It is pertinent to note that a party does not get benefited by allowing his right to be defeated by lapse of time. The costs are considered to be appropriate remedy in such matters when the delay is not inordinate one. It is always appropriate to allow the matters to be decided on merits rather than by default. The present matters are in respect of immovable properties.

9. In the circumstances, Civil Application Nos.14277 of 2019 and 14308 of 2019 are allowed and the delay is condoned subject to the applicants / appellants paying costs of Rs. 5,000/- each to the respondent to be deposited in this Court within two weeks.

(MANGESH S. PATIL)
JUDGE