

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

**CIVIL APPLICATION NO.1444 OF 2019  
IN  
SECOND APPEAL (STAMP) NO.35177 OF 2018**

Babaji Bhagaji Phatangade and Anr. ...Applicants

Versus

Dnyaneshwar Mahadu Gavade and Ors. ...Respondents

....

Mr. Jaydeep Deo for the Applicants.

**CORAM : ANIL S. KILOR, J.**

**DATED: 28<sup>th</sup> JANUARY, 2022.**

**P.C.:-**

1. Heard Mr. Deo, learned counsel for the Applicants. None present for the Respondents, though served.

2. Mr. Deo, learned counsel for the Applicants points out that there is a delay of 35 days in filing the appeal challenging the judgment and award dated 23/07/2018 passed by the learned District Judge-19, Pune in Civil Appeal No.775 of 2012.

3. It is submitted that the Applicant No.1, who was looking after the case was under treatment of Benign Nerve Sheath Tumor and could not contact his Advocate. It is submitted that the medical certificate is enclosed along with the appeal in support of the application. It is further

submitted that the Applicant No.1 was operated and was advised to take rest and thereafter when the Applicant contacted his Advocate he came to know about the dismissal of the appeal and about the impugned judgment and decree. Thereafter steps were taken for filing the Second Appeal. However, delay of 35 days has been caused. Accordingly, the present application was filed for condonation of delay.

4. After going through the reasons stated in the application, I have found the same as satisfactory, particularly in the light of the fact that no reply has been filed opposing or disputing the fact of illness of the Applicant No.1. Moreover, the Applicants have filed medical certificate in support of the reasons stated in the application. In that view of the matter, I am of the opinion that delay has been caused in filing the Second Appeal needs to be condoned. Accordingly, I pass the following order:

**ORDER**

- (i) The application for condonation of delay is allowed;
- (ii) The delay caused in filing Second Appeal is condoned.

The office is requested to register the Second Appeal and place the same before the Court for admission.

(ANIL S. KILOR, J.)