

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD
CIVIL APPLICATION NO. 4522 OF 2012 IN
SECOND APPEAL ST. NO. 9690 OF 2012

Balwant s/o Laxman Deshmukh

Applicant

Versus

Baban s/o Maruti Sonawane & others

Respondents

Mr. G. K. Naik Thigale, Advocate for the applicant.

Mr. A. D. Shinde, Advocate for respondents No. 1 and 2.

CORAM : R. M. JOSHI, J.

DATE : 10th APRIL, 2023.

PER COURT :

1. This application is filed for condonation of delay of 452 days caused in preferring the second appeal challenging the judgment and decree dated 23rd September, 2010 passed in Regular Civil Appeal No. 64/2005.

2. It is the contention of applicant/plaintiff that after passing of the impugned judgment and decree by the First Appellate Court, due to mis-communication, appeal could not be filed in time.

3. Learned counsel for the applicant states that from the same judgment and decree Second Appeal no. 178/2012 is preferred

by original defendant No. 3. According to him, no prejudice will cause to respondents herein if the delay is condoned.

4. Record indicates that inspite of service on respondents, no say is filed to the application which shows that the respondents are not intending to oppose the application. Perusal of application does not indicate that there is any deliberate delay on the part of the applicant in not preferring the second appeal in time. No malafide can be attributed to the applicant for not taking steps to file the appeal before expiry of period of limitation. No prejudice will be caused to the respondents if delay is condoned.

5. In the facts and circumstances of the case, delay deserves to be condoned subject to cost of Rs. 2,000/- payable to High Court Legal Services Sub-Committee at Aurangabad. The amount of cost be deposited within a period of two weeks. On deposit of cost, appeal be registered.

(R. M. JOSHI)
Judge