IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

SECOND APPEAL NO.436 OF 2014
WITH CA/7361/2014 IN SA/436/2014

Vikas Baburao Shelke .. Appellant
Age. 39 YEARS, Occ. Agriculture,
R/o. Wanewadi, Tq. Kalam,
District – Osmanabad.

Versus

1. Shrikant Vitthal Shelke .. Respondents
Age.30 years, Occ. Agriculture,
R/o. Wanewadi, Tq. Kalam,
District – Osmanabad
at presently residing at Prasad Colony,
Tq. & Dist. Osmanabad.

2. Vithal Baburao Shelke
Age. 59 years, Occ. Business,
R/o. Wanewadi, at presently residing
at Prasad Colony,
Tal. & Dist. Osmanabad.

3. Kewalbai Vithalrao Shelke
Age. 55 years, Occ. Household,
R/o. Prasad Colony,
Tal. & Dist. Osmanabad.

4. Asha w/o. Suhas Kashid
Age. 36 years, Occ.Household,
R/o. Vairag, Tq. Barshi,
Dist. Solapur.

5. Usha w/o. Dhananjay Survase,
Age. 34 years, Occ. Household,

R/o. Mahalaxmi Vihar,
Vishrantwadi, Pune.

6. Seema w/o. Suhas Kale,
Age. 32 years, Occ. Household,
R/o. Madha Road, Kurdiwadi,
Tq. Madha, Dist. Solapur.

7. Mahadeo Baburao Shelke,
Age. Major, Occ. Service and Agriculture,
R/o. Towards West Municipal Council
School No.11, Samata Colony, Osmanabad,
Tq. & Dist. Osmanabad.

Mr.Nandkukar U. Yadav, Advocate for the appellant.
Mr.S.A. Ambad, Advocate for respondent No.1.
Mr. A.T. Ghute, Advocate for respondent Nos.2,3 and 7.

CORAM : KISHORE C. SANT, J.
DATED : 23.08.2023

PC :-

01. Heard learned Advocates for the parties. The Second Appeal is taken for final disposal as the order under challenge is an order passed by the learned District Judge refusing to condone delay that was caused in filing the appeal. The delay was of 203 days. The learned District Judge by order dated 19.03.2014 dismissed the application mainly on the ground that the application does not bear signature of the applicant and there was no verification or affidavit along with stay application. Other reason assigned by

the applicant was that for a period from 12.03.2012 till 13.06.2012, he was in jail and therefore he was not in contact with his Advocate. The suit came to be decided on 09.08.2012 i.e. after release of the applicant from jail. On this count also the learned Judge has refused to condone the delay, observing that the application is not bona fide and genuine. It is lastly observed that there is no sufficient ground given for the delay.

02. This Court finds that the appeal against decree is a valuable right of a litigant. In this case the delay is of 203 days. In the facts it cannot be said that the delay is inordinate. As regards signature and verification is concerned, this Court has verified the record. In the record there is application supported by verification signed by the applicant. The parties inform that this affidavit was filed after releasing the appellant, however, before passing of the impugned order.

03. Considering the above aspects, this Court finds that since the appeal is a valuable right of the appellant, the impugned judgment and decree is quashed and set aside. The delay stands condoned that was caused in filing the appeal before the learned District Court, Osmanabad. The appeal is

remanded for consideration on merit. Considering that much time is already consumed in the process of prosecuting Second Appeal, it is expected of the learned District Judge to decide the appeal within a period of one year. The Second Appeal is accordingly allowed and disposed off. Pending Civil Application stands disposed off.

04. Since the Trial Court's order was stayed by this Court during the pendency of the appeal, this Court continues operation of the stay order till the Lower Appellate Court decides stay application. The stay application be decided within two weeks from receipt of record from this Court.

[KISHORE C. SANT, J.]

snk/2023/AUG23/sa436.14