

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD
SECOND APPEAL NO.528 OF 2022**

Smt. Sindhubai Dhanraj Patil & Ors.

... Appellants

Versus

Baburao Kacharu Patil

... Respondent

...

Mr. Patil Vinod Prakash, Advocate for the Appellants

Mr. Girish V. Wani, Advocate for Respondent

...

CORAM : S. G. CHAPALGAONKAR, J.

DATE : 07.08.2023

FINAL ORDER :

1. Heard Mr. Patil, learned Advocate appearing for the appellants and Mr. Wani, learned Advocate appearing for the respondent.
2. After hearing the parties, the following substantial questions of law arises for consideration in this appeal:
 - (i) Whether the Appellate Court is justified in adopting hyper technical approach while dealing with the application seeking condonation of five (05) days delay caused in filing in Regular Civil Appeal against the judgment and decree passed by the Trial Court ?
3. In view of the aforesaid questions of law, appeal is '**Admitted**' and looking to the narrow controversy taken up for final hearing by consent of the parties.

4. Mr. Patil, learned Advocate appearing for the appellants submits that the appellants had approached the District Court assailing the judgment and decree dated 05/04/2019 passed in Regular Civil Suit No.73/2006. Since there was delay of five days in filing appeal, an application seeking condonation of delay was also tendered containing sufficient cause to condone the delay. He submits that applicant no.2 is in service and he was required to obtain a certify copies, but for want of leave from employer, he could not manage to apply for certify copies earlier. Further, there was summer vacation during the period from 03/05/2019 to 02/06/2019. Immediately, after receipt of certified copies, the steps were taken to file the appeal. Mr. Patil, would further submit that the parties are litigating for the rights over the immovable property, in such cases, the decision on merit is required in the interest of justice.
5. Mr. Wani, learned Advocate appearing for the respondent however submits that the appellants have failed to make out sufficient cause for the delay. According to him the reason given by appellants is unacceptable. He supports the reasoning adopted in the impugned order and consequential order passed by the District Judge.
6. Having considered the submissions advanced, It would be suffice to note here that when the parties are litigating for their rights over the immovable property, the Court shall not

adopt hyper technical approach in the matter of condonation of delay. It would be appropriate to refer guidelines of Supreme Court of India in the matter of **Collector Land Acquisition, Anantnag & Anr. Vs. MST. Katiji & Ors.** that reads thus :

- “1. Ordinary a litigant does not stand to benefit by lodging an appeal late.
2. Refusing to condone delay can result in a meritorious matter being thrown out at the very threshold and cause of justice being defeated. As against this when delay is condoned the highest that can happen is that a cause would be decided on merits after hearing the parties.
3. “Every day’s delay must be explained” does not mean that a pedantic approach should be made. Why not every hour’s delay. Every second’s delay ? The doctrine must be applied in a rational common sense pragmatic manner.
4. When substantial justice and technical considerations are pitted against each other, cause of substantial justice deserves to be preferred for the other side cannot claim to have vested right in injustice being done because of a non-deliberate delay.
5. There is no presumption that delay is occasioned deliberately, or on account of culpable negligence, or on account of malafides. A litigant does not stand to benefit by resorting to delay. In fact he runs a serious risk.
6. It must be grasped that judiciary is respected not on account of its power to legalize injustice on technical grounds but because it is capable of removing injustice and is expected to do so.”
7. If the aforesaid guidelines are taken into consideration, the delay of merely five (05) days caused in filing the appeal ought to have been condoned. The learned District Judge completely went on wrong track and gave precedence to technicalities over path of substantial justice. The basic concept of “sufficient cause” is misapplied in the present case.

8. In a given case of short delay, if the Court cannot accede to reasons employed by applicant in support of prayer to condone delay, appropriate compensatory cost can be awarded to the respondents to balance the equalities. In the present case, the reason given by appellants for delay of five days is quite plausible. In that view of the matter, the order under challenge deserves to be quashed and set aside. Hence, following order:

ORDER

- (i) Second Appeal is allowed
- (ii) The impugned order dated 11/03/2022, passed by District Judge, Jalgaon, in Miscellaneous Civil Application No.436/2019 is quashed and set aside
- (iii) The Miscellaneous Civil Application No.436/2019 filed by the appellants seeking condonation of delay of five days caused in filing appeal against the judgment and decree, passed by Civil Judge, Junior Division, Jamner, in Regular Civil Suit No.73/2006 is allowed and the delay caused in filing the appeal is condoned.
- (iv) Appeal be registered and decided on its own merits.

**[S. G. CHAPALGAONKAR]
JUDGE**