

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

CIVIL APPLICATION NO. 13461 OF 2021
IN SAST/24815/2021
WITH CA/12066/2022 IN SAST/24815/2021

MUMTAJ BASHIR MATOLE
VERSUS
PARMESHWAR DHONDIBA KAMBLE AND OTHERS

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Advocate for Applicant : Mr. Rakhunde Pravin B.

CORAM : R.M. JOSHI, J.
DATE : 26th April, 2023

PER COURT :

1. This application is filed for condonation of delay of 1246 days in preferring the Second Appeal against judgment and decree dated 23.01.2018, passed in RCA No. 13/2015.

2. It is the contention of the applicant that she is a lady and after the impugned judgment was passed, she was transferred from Village Dhalib to Mumbai. It is also claimed that her sister-in-law suffered from various diseases since 2018 and, therefore, the applicant could not attend the proceedings. Further, on account of Covid – 19 pandemic steps could not be taken which resulted into causing of delay of 1246 days. According to learned counsel for the applicant, the delay is not deliberate and in the interest of justice, the application deserves to be condoned.

3. Learned counsel for the respondents strongly opposed the condonation of delay on the ground that during the very same period applicant was pursuing the review proceeding. Thus, according to him explanation for not filing of Second Appeal in time is not acceptable.

4. The dispute between the parties is for suit property and it is in the interest of all concerned parties that the dispute to be decided on merit instead of its dismissal on technicalities. From the perusal of application, it seems that the applicant has justified reason for not approaching to this Court in time. On the other hand, the respondents are unable to show that any prejudice will cause to them, if the delay is condoned. There is nothing to show that the interest of these proposed respondents would be affected in any manner by condonation of delay.

5. In such circumstances, application deserves to be allowed by imposing costs.

6. Having regard to the nature of the dispute and the amount of delay caused in filing application, the costs is quantified as Rs. 5,000/- payable to the respondents. Costs to be paid within a period of six weeks.

7. If the costs is not paid within the said period, this order shall stand vacated without further reference to the Court and the Civil Application shall stand dismissed. If costs is paid, Second Appeal be registered.

[R.M. JOSHI, J.]

SPChauhan