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

INTERIM APPLICATION NO.2951 OF 2019

IN

SECOND APPEAL (ST) NO.29562 OF 2019

Ramchandra Chiman Bahiram

...Applicant

V/s.

Guntabai Govinda Gangurde & Anr.

...Respondents

Ms. Pooja Satpute i/b Tushar Sonawane, for the
Applicant.

CORAM : MADHAV J. JAMDAR, J.

DATED : AUGUST 9, 2023

P.C.:

1. Heard Ms. Satpute, learned counsel appearing for the
Applicant. None appears for the Respondents, although
affidavit in reply is filed to the delay condonation Application.

The Interim Application is filed seeking condonation of delay
of one year and 190 days in filing the Second Appeal.

2. The impugned order of the learned First Appellate
Court is dated 14th October 2018 and the present Second
Appeal alongwith delay condonation Application has been
filed on 21st November 2019. The reasons are given in

paragraph 4 of the Civil Application. The said paragraph 4 reads as under :

“4. The applicant states that he is old aged person more than 80 years old, a tribal person and illiterate. The applicant was not aware of the order under challenge passed by the Appellate Court on 14/02/2018 as the same was not intimated by the Appellate Court advocate. He appeared in Darkhast for the first time in 2019 in Regular Darkhast No. 26/2018 upon receipt of summons wherein he engaged advocate. After the advocate who appeared in the Darkhast, the applicant got aware of the impugned order passed by the Appellate Court. The applicant is tribal person. He was not aware about the further challenge to be given again to the said order thereafter. As per the advice of the Executing court advocate, the applicant was made aware that the said order of appellate Court to be challenged in the higher court again so as to protect the possession when the applicant had consulted the said advocate about what to do in the matter when the possession warrant issued by the executing court and the bailiff had attempted to take possession on 07/09/2019. The applicant had no details of the appellate court advocate as he had lost the visiting card and also couldn't contact on telephone. **After the due search thereafter, the applicant went to the appellate court advocate and applied CC of order on 21/09/2019 and received the same on 22/10/2019.** Thereafter, the applicant contacted the present advocate in Second week of November 2019 and he has been advised to file the second appeal against the 14/10/2018 order. Therefore, in such a circumstance the appellant could not file the appeal within stipulated period of time. In such a circumstances the delay on such a bonafide ground is require to be condone. The applicant craves leaves and rely and refer upon the various documents in criminal proceedings as and when require.”

(Emphasis added)

3. Affidavit in reply has been filed by Respondent No.1. The Respondent No.1 has stated that the Applicant has appeared in Regular Darkhast and the present Appeal has been filed on 21st November, 2019 and, therefore, there is no explanation for said period from 17th January 2019 to 21st November 2019. However, perusal of paragraph No.4 which is set out hereinabove shows that the Bailiff had attempted to take possession on 7th September 2019 and, thereafter, the Applicant applied for certified copies of the judgment and decree passed by the learned First Appellate Court on 21st September 2019 and the same was received on 22nd October 2019 and, thereafter, the Appeal has been filed on 21st November 2019.

4. Therefore, sufficient reasons are assigned for condonation of delay. For the reasons set out in the Interim Application, the same is allowed in terms of prayer clause (b).

5. The Interim Application is disposed of in above terms with no order as to costs.

[MADHAV J. JAMDAR, J.]