

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

**CIVIL APPLICATION NO. 3608 OF 2023
IN SAST/8369/2023**

**MAROTI KONDIBA DHAWALE
VERSUS
BABARAO MAHADJI MUDHAL DIED**

...

Mrs. Maya Ramrao Jamdhade, Advocate for Applicant.

Mr. Govind Rangrao Ingole, Advocate for Respondent Nos.1 to 3.

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**CORAM : S. G. CHAPALGAONKAR, J.
DATED : 26th NOVEMBER, 2024.**

P.C.:-

1. The present application is filed seeking condonation of delay of 218 days caused in filing second appeal.
2. Mrs. Jamdhade, learned Advocate appearing for the applicant submits that applicant is rustic person living in village. The Regular Civil Suit No.76/2009 has been decreed against applicant vide judgment and order dated 20.06.2012. He preferred Regular Civil Appeal No.61/2015 before the District Judge-2, Nanded, which came to be dismissed on 13.04.2022. The applicant was not communicated about aforesaid judgment of the District Court by his Advocate. The applicant got knowledge on 29.08.2022. Thereafter, he applied for certified copies and after arranging for expenses filed this appeal. However, in the said process delay of 218 days is caused, which is not intentional.
3. The learned Advocate appearing for the respondents vehemently opposed the application contending that there is inordinate delay of 218 days. The explanation is vague and sans requisite particulars. He would, therefore, submit that applicant

failed to make out sufficient cause within the meaning of Section 5 of the Limitation Act.

4. Having considered submissions advanced, it is apparent that parties are litigating over right in respect of agriculture land. The applicant has stated on oath that there was no communication by Advocate after decision of the District Court. After four months of decision, the applicant came to know about the same and obtained certified copies. The aforesaid statement is not controverted by filing reply. The possibility that applicant spent time in arranging for funds and filing appeal also cannot be ruled out, in absence of reply affidavit. In that view of the matter, case is made out to condone the delay, however, subject to cost to be paid to the respondents. Hence, following order:-

ORDER

- a. Civil Application is allowed.
- b. Delay of 218 days caused in filing the Second Appeal is hereby condoned subject to condition that applicant deposits/pays cost of Rs.3000/- to the respondents within a period of four weeks from today.
- c. On payment of cost, Appeal be registered.
- d. Civil Application is disposed of.

(S. G. CHAPALGAONKAR)
JUDGE