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

**917 CIVIL APPLICATION NO. 5944 OF 2020
IN SAST/12113/2019**

SANTOSH PRABHAKAR TEJBAND AND OTHERS

....Applicants

VERSUS

SHANKUNTALABAI PRABHAKAR TEJBAND AND OTHERS

.....Respondents

Mr. S. A. Deshmukh, Advocate h/f Mr. A. S. Deshmukh,
Advocate for the applicants

Mr. P. N. Kalani, Advocate for respondent Nos. 1 to 3

CORAM : KISHORE C. SANT, J.

DATE : 01st AUGUST, 2024

P. C.

1. Heard the parties for sometime.

2. This application is for condonation of delay of 890 days caused in filing an appeal. It is stated in the application that the applicants had no knowledge of filing of the suit as the applicants were not a party to the suit though the suit property is transferred in the name of these applicants.

3. Learned advocate for the applicants submits that the property transferred in their favour by their grand-father and thus they were necessary parties to the suit. The decree is passed in their absence. He thus, submits that delay is only for want of knowledge. There is no intention to cause the delay.

4. The application is vehemently opposed by the learned counsel Mr. Kalani. He submits that in fact the applicants had every knowledge of the proceeding. Their father all the while was contesting the proceeding. He had even filed an appeal to the learned District Court and after loosing before the learned District Court, he approached this court by filing the second appeal. Second appeal No.803/2016 also came to be dismissed by this court on 20-03-2019. It is immediately thereafter the application is filed clearly showing that the applicants had clear knowledge of the earlier second appeal. He submits that the application is not bonafide and is clearly an attempt to protract the litigation. He submits the judgment and decree which is sought to be challenged is executed. In this way

second appeal has become infructuous. Secondly he submits that when a decree was passed by the learned trial court and the said was carried to the first appeal and then to this court and the same are dismissed. The applicant does not have remedy to file second appeal directly in the High Court without taking recourse of filing of the first appeal before the first appellate court. He thus, prays for rejection of the application.

5. Presently the court is concerned only with the reasons given in the delay condonation application. No doubt, reasons are not as convincing while condoning the delay. However, only because of fact that it is in respect of the immovable property, this court is inclined to allow the application with cost. Hence, following order:-

ORDER

a] The application is allowed subject to cost of Rs.10000/- [Rupees Ten Thousand Only] to be paid to the Legal Services Authority Sub-Committee Aurangabad within two weeks from today.

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b] Delay stands condoned subject to above.

c] Application stands disposed off.

[KISHORE C. SANT, J.]

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