



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

**CIVIL APPLICATION NO. 8282 OF 2023
IN SAST/20588/2023 WITH CA 8283/23**

**VATSALABAI BABAN KAMBALE
VERSUS
MOHAMMAD AYUB ILLIYAS SHAIKH**

Mr. M. K. Bhosale, Advocate for the applicant
Mr. V. R. Dhorde, Advocate for respondent Nos.1 and 2.

**CORAM : R. M. JOSHI, J.
DATE : 16th FEBRUARY, 2024**

P.C. :-

1. This application is filed for condonation of delay of 349 days in preferring the appeal against the judgment and decree dated 21/04/2022 passed in RCA No. 362/2016. The applicant claims that she is 82 years old lady. The applicant is widow and her all sons have died. There is no male in the family to look into the proceeding.

2. Accordingly to learned counsel for applicants, there is sufficient reason shown for condonation of delay. Learned counsel for the respondent opposed the contention raised by the applicant relying upon the roznama recorded in RD No. 90/2019 showing that on 25/07/2022 applicant was present before the Execution Court. Thus, according to him, this indicates that the reasons sought to be made out by the applicant for condonation of delay is not satisfactory. According to him, these are dilatory tactics adopted by the applicant in not filing the appeal

in time. He also raised objection with regard to the maintainability of the appeal.

3. Perusal of the application does not show that for want of knowledge only the applicant could not prefer the appeal in time. She however claims to be a lady of 80 years age and that there is no male member in her family. There is nothing on record to contradict the said case sought to be made out by the applicant. In considered view of this Court, sufficient reason is mentioned for not taking action against the impugned judgment and decree passed by the First Appellate Court. No malafides can be attributed to the applicant for not preferring appeal in time. Hence, application deserves to be allowed. In the result, application stands allowed in terms of prayer clause 'B'. Appeal be registered.

4. The issue with regard to the maintainability of Second appeal raised by the learned counsel for the respondents is kept open.

5. Issue notice to the respondents in Second Appeal. Learned counsel Mr. Dhorde waives service of notice on behalf of respondents.

6. List the appeal for admission on 18th March, 2024.

7. Interim relief to continue till the next date of hearing.

(R. M. JOSHI, J.)

ssp