



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

33 CIVIL APPLICATION NO. 12311 OF 2022
IN FAST/21308/2022

BHAVRAO LAXMANRAO KOLTE AND ORS
VERSUS
NAMDEV HARI DOKALE (DIED) DEVA S/O KHEMA NAIK AND ANR

Mr.S.R. Sapkal, Advocate for the applicants.
Mr.Menezes Joslyn, Advocate for respondent Nos. 2 and 3.

CORAM : KISHORE C. SANT, J.
DATED : 05.07.2024

PC :-

01. This application is filed for condonation of delay of 3096 days caused in filing the appeal, challenging the judgment and order passed by the learned District Judge-3, Aurangabad in MARJI No.300 of 2013 dated 20.11.2013.

02. It is stated that though the applicants were desirous of filing appeal, it was informed that the State is also intending to file an appeal. The applicants were thus under impression that in view of filing of the appeal by the State Government, they need not file any appeal. The Government filed appeal along with delay condonation application in this Court, wherein these applicants were shown as respondents. On going through the appeal memo filed by the Government, the applicants realized that there are some more grounds required to be taken in the appeal memo, for which the appeal is required to be filed. It is thereafter the applicants decided to file independent

appeal. For this reason the delay is caused.

03. The learned Advocate for respondent Nos. 2 and 3 vehemently opposed the application stating that no convincing reason is appearing in the application to condone the delay. Even the State Government filed the appeal after more than four years. Till that period they could not have waited to file their appeal.

04. Considering the submissions and considering that already there is challenge by the Government to the same judgment and order and as this Court needs to address the points raised in that appeal, it would not be proper to refuse to entertain the appeal filed by the present applicants on the ground of delay itself. At the same time it was necessary for the applicants to be more vigilant if at all they are concerned with the grievance. The delay on their part certainly has caused inconvenience and that gave impression to the respondents that that applicants accepted judgment and order. Therefore, some costs needs to be imposed on the applicants. Hence, following order :-

ORDER

- (i) The Civil Application is allowed.
- (ii) The delay of 3096 days caused in filing first appeal stands condoned subject to payment of costs of Rs.5000/- (Rupees Five Thousand) to be deposited in the office of High Court Legal Services Sub-Committee, Aurangabad.
- (iii) The first appeal be registered

[KISHORE C. SANT, J.]