



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

**24 CIVIL APPLICATION NO. 11888 OF 2023
IN SAST/28961/2023**

BHAUSAHEB SARUNATH KOLHE

....Applicant

VERSUS

**PROPOSED SHRI GURUDEV DATTA SAH PANI PURWATHA YOJANA
VADGAON PAN THR PROMOTER S. S. THORAT AND ORS**

.....Respondents

Mr. K. N. Shermale, Advocate for Applicant

Mr. Ajay T. Kanwade, Advocate for the Respondents 2 to 7

CORAM : Y. G. KHOBRADE, J.

Dated : 11th March, 2024

PER COURT :-

1. Heard learned counsel for both sides at length. Though the non Applicant No.8 Bajirao Ahilaji Dighe duly served with notice, failed to appear in the matter. The applicant has filed the present application for condonation of delay of 368 days caused in lodging the second appeal.

2. The applicant has set out the ground that he had not received any communication from his counsel about the decision of Regular Civil Appeal dated 08.06.2022 and after he came to know about the decision of the appeal, he applied for certified copy of the judgment and decree on 12.07.2023, which he received on 03.08.2023. According to the applicant there is no deliberate delay on his part, hence, prayed for condonation of the same.

3. The Non Applicant Nos. 1 to 7 have resisted the application only on the ground that the delay is not substantially and bonafide explained by the applicant.

4. It is well settled law that the litigant should not be deprived from gating justice on technical ground. The ground which has been set out appears to be bonafide about not receiving communication form his counsel in respect of decision of the appeal.

5. In the case of **Rafique Vs. Muncilal reported in 1981 2 SCC 788**, it has been held that the litigant should not suffer for the act of his counsel. Therefore, considering the nature of dispute and the reason set out in the application, delay of 368 days caused in filing the appeal is hereby condoned, subject to cost of Rs.2000/- to be paid to the Advocate's Association of Bombay High Court, Bench at Aurangabad within a period of 15 days from today.

6. If the cost amount is paid, the office is directed to register the second appeal and list before this court for further action. Interim relief, if any, granted earlier would continue till then.

(Y. G. KHOBRAGADE, J.)

JPChavan