



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD
CIVIL APPLICATION NO. 12686 OF 2024
IN SAST/32211/2024**

BHARAT JADHAV CHAVAN
VERSUS
ROHIDAS RAMJI CHAUDHARI

...
Mr. Subodh Pravinkumar Shah, Advocate for Applicant.
Mr. S. S. Bora h/f Mr. S. P. Pandit, Advocate for Respondent.

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

P.C.:-

1. Heard Mr. Shah, learned Advocate appearing for the applicant and Mr. Bora, learned Advocate appearing for the respondent.

2. It appears that, applicant has already filed common Second Appeal against judgment and decree passed in appeal and cross-objection by District Court. However, after objection that even against order on cross-objection, independent appeal is required to be filed, the present Second Appeal is filed. There appears delay of 253 days in filing this Appeal. The explanation is sought to be tendered that it is only after objection as regards to the maintainability of single appeal against impugned judgment and decree present appeal is filed.

3. According to Mr. Subodh Shah there is ambiguity as regards to the legal position, if independent appeal required to challenge part of decree arising from cross-objection decided with appeal. However, as per view taken in Full Bench judgment of High Court of Himachal Pradesh relied upon by the respondent, present appeal has been filed.

4. Mr. Bora, learned Advocate appearing of the respondent submits that tenor of explanation offered for condoning delay is not proper. According to him, legal position is settled by way of Full Bench judgment. The applicant could not have shown ignorance to it. According to him, no plausible explanation is given for inordinate delay of 253 days.

5. Having considered submissions advanced, it can be observed that already applicant has preferred appeal raising substantive challenge to judgment and decree passed by the Appellate Court. Even the part of decree, which is arising out of cross-appeal has been objected in that appeal. However, after getting notice of technical objection, present appeal is separately filed. The delay occasioned in filing present appeal appears to be unintentional. No prejudice would be caused to the respondent, if delay is condoned in facts and circumstances of the case. Hence, following order is passed:

ORDER

- a. Civil Application is allowed.
- b. Delay of 253 days caused in filing Second Appeal is hereby condoned.
- c. Appeal be registered.
- d. On registration of appeal, place it for admission on 02.12.2024 alongwith Second Appeal No.382/2024.

(S. G. CHAPALGAONKAR)
JUDGE