



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

905 CIVIL APPLICATION NO. 3418 OF 2021
IN SAST/38511/2019

SHIVSHANKAR ANANDA HIVRALE
VERSUS
BALWANT MADHAVRALE AND ANOTHER

...

Mr. Wankhade Manikrao L, Advocate for Applicant
Mr. S. c. Bhosale, Advocate for Respondent Nos. 1 and 2

CORAM : Y. G. KHOBRAGADE, J.
DATE : 24th April, 2024

ORDER:

1. Heard Shri M. L. Wankhede, the learned counsel appearing for the applicant and Shri Bhosale, the learned counsel appearing for the non-applicants at length.

2. By the present application, the applicant invoked the jurisdiction of this Court under Section 5 of the Limitation Act and prayed for condonation of delay of 532 days caused while lodging the appeal against the judgment and order dated 20.03.2018 passed by the learned District Judge/First Appellate Court in Regular Civil Appeal No. 10 of 2011 arising out of the judgment and decree dated 11.03.2011 passed by the Joint Civil Judge, Junior Division, Bhokar in Regular Civil Suit No. 04 of 2010, whereby the suit of the plaintiff for cancellation of mortgage deed and restoration of possession of the suit property has been decreed.

3. The applicant/plaintiff contended that he is residing in a remote village- Golegaon Tq. Umri and he could not contact with his counsel about decision of the First Appellate Court and soon after he got knowledge, he approached his counsel and filed the appeal, for which the delay of 532 days caused, which is substantial and bonafide, hence, prayed for condonation of the same.

4. Per contra, the learned counsel appearing for the Non applicants strongly resisted the application on the ground that the applicant has not explained the delay properly and no bonafide and substantial reasons assigned to condone the delay.

5. It is settled law that the litigants should not be deprived from receiving justice on technical ground and if the delay is bonafide and sufficiently explained, the court should take a liberal approach while condoning the delay.

6. Needless to say that the delay of 532 days appears to be caused for want of communication between the applicant and his counsel which appears to bonafide and substantial. However, at the same time, the non applicants may suffer for the delay on the part of the applicant, which can be compensated by imposing costs.

7. In view of the above, I am inclined to grant the application and proceed to pass the following order:

ORDER

- (i) Civil Application No.3418 of 2021 is allowed.
- (ii) The delay of 532 days caused while lodging the appeal is hereby condoned subject to payment of cost of Rs.3,000/- payable by the applicant to the non applicants on or before 06.05.2024.
- (iii) After the order of cost is complied with, Office to register the appeal place the same before the Court on 08.05.2024 for further action.

(Y. G. KHOBRADE, J.)

JPChavan