



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

37 CIVIL APPLICATION NO. 6479 OF 2025
IN SAST/10858/2025

SAMPATRAO GULABRAO ZANJAD
VERSUS
CHANDRAKANT GULABRAO ZANJAD AND ORS

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Advocate for Applicant : Mr. Dhananjay A. Mane h/f Mr. Bharat Pankaj
Annasaheb

Advocate for Respondent No. 1 : Mr. Gayatri Kalve h/f Mr. Ghatge Mahesh V.

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CORAM : SHAILESH P BRAHME, J.

DATE : 11.08.2025

PER COURT :

Heard both the sides.

2. The applicant is seeking condonation of delay of 255 days in preferring the appeal. The present second appeal is emanating from alternate finding of facts granting decree of declaration in favour of the respondents.

3. The learned advocate for the applicant would advert my attention to the grounds stated in paragraph Nos. 2 to 4. In support of that it is submitted that the applicant is aged and he was not in a position to prosecute the matter because of precarious financial conditions. It is submitted that there are no *mala fides* on the part of the applicant in preferring the appeal belatedly.

4. Per contr, the learned counsel Ms. Kalve appearing for the respondent no.1 would vehemently oppose the submissions of the counsel and contents of the application. My attention is adverted to the affidavit in reply to buttress the case that the applicant was having knowledge of the decree

passed by the lower Appellate Court. There is no proof of illness and the time from which the applicant was disabled. It is further contended that the poverty cannot be a ground for condonation of delay. It is further submitted that the the delay is intentional. It is contended that the parties are in respective possession of their shares.

5. The learned counsel would rely on the judgment of learned Single Judge in the matter of **Kamalabai Narasaiyya Shrimai & anr. Vs. Ganpat Vithalrao Gavare; 2007(1) Bom.C.R. 51**. My attention is adverted to the observations in paragraph nos. 9, 10 and 13 to buttress a point that delay is not sufficiently explained and no specific grounds are quoted with material particulars in the application.

6. I have considered the rival submissions of the parties. It reveals from the record that in the Trial Court, the matter proceeded *ex parte*. The lower Appellate Court pronounced the judgment on 15.04.2023. The applicant's age quoted in the application is that of 68 years. He was *ex parte* before the Trial Court. Therefore, in all probabilities, his plea of want of knowledge of the decree passed by the lower Appellate Court has merit. It is alternate finding of facts. Substantive rights are at stake.

7. The delay is of only 255 days. Though the application is silent regarding economic condition and illness, I do not find that it is a fit case to reject the application. I prefer to adopt a pragmatic view in condoning the delay and granting opportunity to parties to address the court on merits.

8. The facts in judgment cited by the learned counsel for the respondent are distinguishable. The length of delay and poverty cannot be the sole grounds to condone the delay. But there cannot be a straight jacket formula for considering the applications for condonation of delay. The facts and circumstances of each case have to be assessed on their own merits. Therefore, in my view, the judgment would not enure to the benefit of the respondents. Important facet of the matter needs to be looked into is that I

do not find that there are any *mala fides* in preferring the appeal belatedly.

9. In that view of the matter, for the reasons stated in the application, the delay stands condoned. Civil Application is allowed in terms of prayer clause 'B'.

10. Register the second appeal.

11. List this matter on 19.08.2025, in urgent category.

(SHAILESH P. BRAHME, J.)

mkd/-