



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

**CIVIL APPLICATION NO. 11010 OF 2025
IN
APPEAL FROM ORDER STAMP NO. 29794 OF 2025**

Mr. Asad Choudhari S/o Abdul Hasan
Choudhari and others .. Applicants

Versus

Mr. Shakil Ahmed Siddiqui S/o
Sageer Ahmed Siddiqui .. Respondent

Shri S. V. Adwant, Advocate for the Applicants.
Shri Sanjeev Deshpande, Senior Advocate i/by Shri Patel shaikh
Ashpak Taher, Advocate for the Respondent.

**CORAM : SHAILESH P. BRAHME, J.
DATE : 08TH OCTOBER, 2025.**

FINAL ORDER :

. Heard both sides.

2. Applicants seek to condone the delay of 54 days caused in presenting appeal from order.

3. It is contended that for challenging order dated 09.05.2025 Misc. Civil Appeal No. 56 of 2025 was filed before the District Court on 09.06.2025. Applicants were under misconception that appeal U/O 43 of the Code of Civil Procedure would lie before the District Court. Lateron mistake was realized and application Exhibit 17 was filed seeking permission to withdraw appeal for

approaching appropriate forum. Such permission was granted on same day i. e. on 16.08.2025. Thereafter present appeal is filed on 30.09.2025. It is submitted that the delay is not intentional. The applicants were prosecuting wrong remedy under *bona-fide* impression.

4. Learned senior counsel Mr. Sanjiv Deshpande appearing for the respondents opposes the submissions of the learned counsel for the applicants by relying on affidavit in reply. It is submitted that length of delay is immaterial. The conduct of the applicants is objectionable. On 01.08.2025 itself it was brought to the notice of the District Court as well as applicants by the respondent vide application Exhibit 12 that appeal was not maintainable. This fact has been suppressed in the application for condonation of delay. It is submitted that false statement is made in the application.

5. Applicants are aggrieved by order of injunction passed below Exhibit 05 in Spl. C. S. No. 172 of 2025. They approached District Court by filing Misc. Civil Appeal No. 56 of 2025 on 09.06.2025. The respondent brought to the notice of the lower Appellate Court vide application Exhibit 12 that appeal was not maintainable. Thereafter on 16.08.2025 the steps were taken seeking withdrawal of appeal with liberty to file appropriate proceedings. In the application it is not disclose that vide application Exhibit 12 objection for maintainability of the appeal was raised.

6. When the cause of substantial justice and technical considerations are pitted against each others, the practical approach is to prefer the substantial justice. Considering the issue involved in the matter, it is desirable is to condone the delay and minor aberration of the party cannot be taken into account when it comes to the adjudication of substantive rights of the parties.

7. The suppression as alleged by the respondent is not of such a gravity to punish the applicants by rejecting the present application. Ends of justice would be met in condoning the delay and hearing the appeal on merits.

8. For the reasons stated above, the civil application is allowed and delay stands condoned. The civil application is disposed of.

9. Office is directed to register the appeal from order.

[SHAILESH P. BRAHME J.]

bsb/Oct. 25