



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

101 CRA NO. 254 OF 2025

BALWANT KHANDU KOKATE
VERSUS
ASHOK BANSI JADHAV AND OTHERS

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Advocate for Applicant : Mr. Dattatraya Rambhau Markad.
Advocate for Respondent Nos.1 & 2 : Mr. Bedre Vinayak S.

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CORAM : SHAILESH P. BRAHME, J.
DATE : 10.03.2026

PER COURT :-

1. Heard both sides.
2. Civil revision application is directed against order dated 30.10.2025 thereby condoning delay of 130 days in preferring appeal under Section 96 of the CPC.
3. Applicant is the original plaintiff who had filed Regular Civil Suit No.54 of 2021 for declaration and removal of encroachment. Contesting respondent Nos.1 and 2 are original defendant Nos.4 and 5 who are alleged to have encroached upon 14 R. of land of Gut No.45. In pursuance of the summons, they appeared in the suit through lawyer but they did not file written statement. The matter proceeded further. Trial Court decreed the suit on 16.09.2023. Respondent Nos.1

and 2 approached the Appellate Court by filing Civil Misc. Application No.55 of 2024 for condonation of delay in preferring appeal. The delay was condoned by the impugned order.

4. Learned counsel for the applicant has adverted my attention to the cross-examination to show that the reasons given for condonation of delay are totally inconsistent and misconceived. It is submitted that there are lapses on the part of the respondents and the delay was intentional. It is submitted that no medical papers are placed on record and ground of ailment is after thought. It is further submitted that the parties are at the loggerheads and it is difficult to conceive that at the instance of the applicant, the respondents did not report the lawyer or other Court.

5. Per contra, learned counsel Mr. Bedre appearing for the respondents submits that the Court has taken reasonable and plausible view. It is submitted that impugned order is in consonance with the principles of natural justice.

6. I have considered rival submissions of the parties. The cross-examination which is pointed out by learned counsel for the applicant shows that the medical ground put forth is not

corroborated. It further reveals that the parties were at the loggerhead and the reasons stated in the application that at the instance of plaintiff, the defendant did not report cannot be countenanced.

7. Right of appeal under Section 96 is substantive statutory right. The delay cannot be said to be inordinate. The view taken by the Appellate Court in condoning the delay cannot be said to be perverse or patently illegal and cost of Rs.2,000/- has also been imposed. Under given circumstances, I find that cost is inadequate and it is enhanced to Rs.5,000/-. Save and except the cost. No interference is called for.

8. Civil revision application is rejected.

9. Respondent Nos.1 and 2 shall pay cost of Rs.5,000/- or the balance cost within a period of two (2) weeks from today.

(SHAILESH P. BRAHME, J.)

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vmk/-