

ORDER PASSED BELOW EXH.01 IN Civil M.A. NO.29/2017.
Sahebrao Gajaram Javale & Ors. Vs. Balasaheb Deoram Javale.

1] Read application and say. Heard both the sides. This application under section 5 of the Limitation Act is filed by applicant for condoning 52 days delay caused in filing appeal against judgment and decree passed in R.C.S.No.114/2014 by Civil Judge J.D. Kopargaon.

2] I have heard both the sides and gone through the record. The respondent had filed the suit bearing R.C.S.114/2014 against the present petitioners for perpetual injunction in respect of the land Gat No.109/17 area 12-R, Gat No.109/13 area 14-R and Gat No.109/21 area 3 ¼ R situated at village Chandekasare, Tal. Kopargaon. The said suit of the respondent is decreed by the Civil Judge J.D. Kopargaon on 18-03-2017. As such, appeal ought to have been filed on or before 24-04-2017 by excluding period for getting certified copy, but appeal along with this application is filed on 15-06-2017 and as such, delay of 52 days is caused. According to them, due to the illness of petitioner No.1 they could not prefer appeal within time. The application is supported by affidavit and medical certificate. Looking into the period of delay, I think, ground of illness may be a cause prevented appellant to file appeal within time. It is true that respondent is unnecessarily suffered by pressing this application and hence, he is to be compensated by awarding cost. Accordingly, following order is passed.

ORDER

- 1] The application is allowed.
- 2] The delay caused in preferring appeal against the judgment and decree passed in R.C.S.No.114/2014 by the Civil Judge J.D. Kopargaon is hereby condoned subject to cost of Rs.1,000/- payable to respondent within 15 days from today.
- 3] Payment of cost would be condition precedent for condoning delay.

Date: 22.03.2018.

(M.Y.A.K. Shaikh)
District Judge-1, Kopargaon.