

MHND080003162022



Order below Exh.1 in Misc. Civil Appln. No.188/2022
(Gayabai Vs. Chandarbai)

Present application is filed by the applicant to condone the delay of 59 days incurred in filing RCA against the decree passed by 2nd Jt. Civil Judge, Jr. Division, Kandhar in RCS No. 190/2012 dated 15-07-2022.

2. It is contended that the applicant No.1 is old aged and she used to remain ill. Her husband is about 90 years old and the applicants are required to attend him. It is contended that the judgment is declared on 15-07-2022, on 02-08-2022 application for certified copy is filed, the certified copies were received on 18-08-2022. It is contended that the applicants were required to arrange for the fees of their learned advocate and after the said arrangement, the appeal is filed alongwith application. It is contended that there is no deliberate delay in filing the appeal, there is sufficient reason for not filing the appeal within the period of limitation. Ultimately, they have prayed for allowing the application.

3. The applicant Nos. 1 to 4, 6 and 7 have filed their say vide Exh. 17 and have denied all the averments made in the application. According to them, the respondent No.5 Abarao has

died prior to filing of the application and without bringing his LR's on record, application is not maintainable. It is contended that the applicant Nos. 2 to 4 were doing their daily work and so the reason given for the delay is not correct. It is contended that there is no explanation as to why the advocate fees was not arranged at the earliest. It is contended that the reasons given for the delay are not proper, no any documentary evidence is filed in that respect. It is contended that the applicants are deliberately trying to delay the proceeding. Ultimately, it is prayed to dismiss the application and if the Court comes to conclusion that delay is to be condoned, then Rs. 5000/- costs be saddled on the applicants.

4. Heard both the sides. The learned advocate for the applicants have reiterated the averments made in the application. The learned advocate submitted that the respondents have objected the application mainly on the ground that the respondent No.5 has died prior to filing of the application and in absence of his legal heirs, the application deserves to be dismissed. The learned advocate while referring to the Bailiff report submitted that it is reported that the respondent No.5 Abarao has died. He while referring to the photocopy of the death extract, submitted that the respondent No.5 Abarao has died on 07-09-2019, the trial Court has delivered the judgment on 15-07-2022. He submitted that the respondent No.5 has died during pendency of the suit, however, his legal heirs were not brought on record.

5. He submitted that the applicant No.1 is old aged women and all the applicants were taking care respectively of

husband and father. He submitted that the delay is not intentional, valuable rights are involved in the landed property. He submitted that the delay, therefore, needs to be condoned.

6. On the other hand, the learned advocate for the respondent Nos. 1 to 4, 6 and 7 submitted that the reasons given in the delay are not just and sufficient. He submitted that the applicants easily could have arranged the fees of the learned advocate and on this count, the delay cannot be condoned and prayed to dismiss the application.

7. The applicant No.1 is an old aged lady. Her husband is said to be more than 90 years old. The applicants say that they were unable to arrange for the fees of learned advocate. The parties are residing in a village, they are agriculturists. Considering the grounds mentioned in the application and fact that the application is supported by the affidavit, it cannot be said that false grounds are raised by the applicants.

8. As far as the respondent No.5 is concerned, as discussed above, the death extract of respondent No. 5 discloses that he has died during the pendency of the suit and his legal heirs were not brought on record. Considering these facts, it will be unjust and improper to dismiss or reject the application. There is a delay of 59 days which needs to be condoned, subject to payment of certain costs. Hence, following order is passed :-

ORDER

1. The application is allowed.
2. The delay of 59 days occurred in filing Regular Civil Appeal against the judgment and order passed by Jt. 2nd Jt. Civil Judge, Jr. Division, Kandhar in RCS No. 190/2012 dated 15-07-2022 is hereby condoned, subject to payment of costs of Rs.1,000/- to be paid on or before 10/02/2026.
3. After payment of costs, the Superintendent of this Court to register the Regular Civil Appeal, after verification.

Date : 28.01.2026

sd/-
(M. N. Patil)
District Judge, Kandhar

CERTIFICATE

I affirm that the contents of this PDF file order are same, word to word, as per the original order.

Name of stenographer	Y.S. Kausadikar
Name of Court	Addl. Sessions Court-1, Kandhar
Date of Dictation	28.01.2026
Order signed by the PO on	31.01.2026
Order uploaded on	31.01.2026

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