

MHAH010015482023

**IN THE COURT OF DISTRICT JUDGE-7 AT AHMEDNAGAR.****CIVIL MISC. APPLICATION NO. 49/2023****Sou. Muktabai Vitthal Khedkar & Ors.****Vs.****Smt. Rukminibai Manik Khedkar & Ors.****ORDER BELOW EXH. 1**

This is an application filed by the original defendant nos.1 to 3 for condonation of delay of 53 days under section 5 of the Limitation Act against the order passed below Exh. 5 in Regular Civil Suit No. 368/2022 on 16.12.2022 by Jt. Civil Judge Jr. Division, Pathardi, Tal. Pathardi, Dist. Ahmednagar.

2. It is the contention of applicants that they are defendant nos.1 to 3 in original suit. The plaintiff i.e. respondent no.1 filed suit for perpetual and mandatory injunction along with application for temporary injunction which is registered as R.C.S. No.368/2022 before the Jt. Civil Judge Junior Division, Pathardi. In the said suit, the Ld. Trial Court allowed the application below Exh.5 and thus, thereby the defendants, their agents or servants are hereby temporarily restrained from putting any further construction over the suit property otherwise than in due process

of law. The defendants want to challenge this order but they could not file the appeal within stipulated period i.e. from the date of passing the order because the applicants were not having sufficient knowledge of Court proceeding. They further submitted that delay is not intentional. If the application is not allowed, they will face irreparable loss, which cannot compensate in terms of money.

3. The order below Exh. 5 is passed on 16.12.2022. Against the said order, the Appeal should have filed within 30 days from the date of this order. The present appeal is filed along with delay application on 13.03.2023. After deduction of statutory period of 30 days to prefer an appeal, 53 days delay is caused for filing the present appeal.

4. After service of notice to respondents, the respondent nos.1 and 2 appeared in the said application but failed to file their say. Hence, the application is proceeded without say against them. Even the respondent nos.3 & 4 did not appear in the said application, therefore, the application is proceeded *exparte* against them.

5. Heard both the parties at considerable length.

6. Considering the application for condonation of delay and argument of both the parties, the following points arises for my determination and I answer the same along with reasons as under-

<i>Sr. No.</i>	<i>Points</i>	<i>Findings</i>
1)	Whether the applicants shows that they are having sufficient cause for condoning the delay ?	Yes.
2)	What order ?	As per final order.

REASONS

AS TO POINT NOS.1 & 2 -

7. As per order 41 Rule 3-A of the Code of Civil Procedure read with section 5 of Limitation Act, the delay can be condoned to file an appeal, if the appellant shows sufficient cause for not preferring an appeal within prescribed period. As per Limitation Act, the appeal can be filed within 30 days. As per the applicants, they are original defendant nos.1 to 3 in suit RCS no. 368/2022. Order passed below Exh. 5 on 16.12.2022. They submitted that they were having no knowledge of law and Court proceeding, therefore, they failed to contact their advocate for filing their appeal against order below Exh.5. Therefore, to prefer an appeal, 53 days delay is caused. They submitted that the delay is not intentional. They further submitted that if the delay application is not allowed, they will suffer irreparable loss.

8. The applicants having hope to succeed in their appeal. The applicants are having interest in suit property. Therefore, the opportunity to contest the application below Exh. 5 in appeal be given to the applicants. The applicants are having sufficient cause

for not preferring appeal within statutory period, therefore, considering the application and affidavit and documents filed by the applicants, in the interest of justice, the delay of 53 days be condoned, subject to costs. To prefer an appeal is right of the litigant. The reasons mentioned by the applicants are genuine. The applicants have shown sufficient cause for not preferring an appeal in prescribed time. Therefore, I am of the considered opinion that in view of the aforesaid facts and circumstances, it is necessary to condone the delay of 53 days. Therefore, I answer point no.1 in the affirmative and in answer to point no.2, I pass following order;

ORDER

1.	Delay of 53 days to prefer an Appeal against the order passed below Exh.5 in Regular Civil Suit No.368/2022 by Jt. Civil Judge Junior Division, Pathardi on 16.12.2022 is hereby condoned, subject to cost of Rs.1,000/- payable to D.L.S.A., Ahmednagar within 15 days from the date of this order.
2.	Concerned superintendent is directed to register the Appeal, after payment of cost.
3.	Accordingly the application is disposed of.

Date : 09.06.2026.

(Rajesh M. Tayade)
District Judge-7,
Ahmednagar.