



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE CIVIL JURISDICTION**

**INTERIM APPLICATION NO.253 OF 2021
IN
SECOND APPEAL (ST.) NO.96361 OF 2020
WITH
INTERIM APPLICATION (ST.) 96365 OF 2020
WITH
SECOND APPEAL (ST.) NO.96361 OF 2020**

1. Chetan Goradhandas Khumbawat
Age 62 years. Occ. Business,
Residing at – 549, Mandir Faiiu,
Sodhalwala-1, Tal. Padi, Dist. Valsad

2. Chetan Jayantilal Shah
Age 54 years, Occ. Business,
Residing at-IV-406, Indraprasth-2-B,
Raheja Township Road, Malad (East),
Mumbai-400 097

... Applicants
(Org.Plaintiff Nos.2 &3)

Versus

1. Jaywant Moreshwar Patil
Age – 63 years, Occ. Agriculturist

2. Jayashree Moreshwar Patil
Age – Adult. Occ. Not known

3. Pramod Moreshwar Patil
Age – 50 years. Occ. Agriculturist

4. Shobha Pramod Patil
Age – Adult Occ. Not known

5. Narendra Moreshwar Patil
Age – 52 Yeas, Occ. Not known

6. Surekha Narendra Patil
Age – Adult, Occ. Not known

7. Asha Ramchandra Patil
Age – Adult, Occ. Not known

8. Lalita Ganesh Patil,
Age – Adult, Occ. Not known

9. Damayanti Kamlakar Tangdi/Vangdi,
Age – Adult. Occ. Not known

10. Hirabai Ramchandra Patil
Age – 59 years, occ. Agriculturist,
All the Respondent Nos.1 to 10 are
Residing at – Jeevdani Kripa, Gavdevi
Maidan, Navghar, Bhayander (East),
Tal. & Dist. Thane.

11. M/s Om Constructions
A partnership firm formulated under
The Indian Partnership Act, through its
Partners Mr. Vinod Velighai Patel And
Ashok Korekappa Karekara

12. Vinod Veljibhai Patel
Age – 45 years, occ. Business

13. Ashok Korekappa Karekara
Age – 41 yeas. Occ. Business
Respondent Nos.11 to 13 are their
having office at – C/58, Shanti
Shopping Centre, Mira-Road,
Bhayander (East), Tal & Dist.
Thane-401 107

14. M/s Chandan Shanti Group
of Companies
A Partnership Firm duly registered
under The Indian Partnership Act,
1932, through its Partner Shri Naresh
Hansraj Shah, having its Principal
Place of Business at – Shanti Park,
Mira-Road (East), Tal. & Dist. Thane

... Respondents
(Nos. 1 to 13 are Org.
Defendant Nos.1 to 13 and
No.14 is Org. Plaintiff No.1)

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Mr. Manoj Bhatt for the Applicants.

Mr. Ashutosh Gole for Respondent Nos.1, 3, 5, 8, 10 and 11.

* * *

CORAM : VINAY JOSHI, J.

DATE : 13 SEPTEMBER 2023

ORAL JUDGMENT :

. This is an application seeking condonation of delay of 3 years, 3 months and 11 days in filing the Second Appeal. The Applicants along with a partnership firm had initially filed Regular Civil Suit No.93 of 2008 for declaration, injunction and for specific performance. It was the case of the Applicants that the original Defendants had executed the agreement dated 25 March 1993 to transfer, sell and alienate the suit property in favour of the Applicants (Plaintiff Nos.2 and 3). Lateron Plaintiff Nos.2 and 3 had reassigned their rights in favour of Plaintiff No.1 vide document dated 27 July 1993. After completion of the pleadings, the Trial Court has framed the issues. Defendants objected to the maintainability of the Suit on the ground that the suit of unregistered partnership firm is not maintainable. The said objection caused the Trial Court to hear the issue of maintainability as preliminary issue. The Trial Court has decided the preliminary issue in favour of the Defendants by holding that the suit is not

maintainable and accordingly, it was dismissed vide Order dated 28 April 2015.

2. Being aggrieved, the Applicants (Plaintiff Nos.2 and 3) have preferred Regular Civil Appeal No.178 of 2015. However, the said appeal came be dismissed on merits by Judgment and Order dated 27 April 2017. It is informed that original Plaintiff No.1 had also filed an appeal challenging the dismissal of the suit.

3. In above background, this Second Appeal is filed along with the delay condonation application. The delay sought to be condoned in terms of Section 5 of the Limitation Act by stating that the Applicants have made out a sufficient cause for the delay caused in filing Second Appeal. Precisely, it is submitted that the proceedings of the trial court and the first appellate court were looked after by Applicant No.1-Chetan Khumbawat only. Applicant No.2-Chetan Shah was not looking after the proceedings, as Chetan Khumbawat was entirely paying attention to the litigation. It is the Applicants' contention that after dismissal of the first appeal, Applicant No.1-Chetan Khumbawat, who was looking after the proceedings had renounced the World and under psychological and emotional conditions, left his home abandoning the proceedings without the

knowledge of Applicant No.2. He was also not traceable for more than 2 years, which has caused delay. Later on, Applicant No.1- Chetan Khumbawat returned and applied for certified copy, handed over to the Advocate, but again went to Ashram and thus, it has added further delay. The reason for delay has been canvased in paragraphs 6 and 7 of the Application, which are reproduced herein below :-

- “6. The Applicants humbly state and submit that, the impugned judgment and decree was passed by the lower Appellate Court on 27/04/2017. The Applicants state that after filing of the said Appeal the Appellant No.1 was solely looking after the proceedings in Lower Appellate Court and was representing the Applicant No.2 also in the Appellate Proceedings. However, owing to the psychological and emotional conditions faced by the Applicant No.1, the Applicant No.1 had left his home abandoning the said proceedings without the knowledge of the Applicant No.2 and was not traceable for more than 2 years. The Applicant No.2 was completely relying on the Applicant No.1 in dealing with the said Appeal and their Advocate was also in touch with the Applicant No.1 only.
7. After much search and efforts the Applicant No.1 was found and brought home, and only thereafter the Applicants made inquiries and became aware of the impugned judgment and decree dated 27/04/2017 passed in the said appeal. Thereafter they approached their advocate and received certified copies obtained by their Advocate on their behalf. However, the certified copy of the judgment of the Ld. Lower Appellate Court was missing and hence the Applicant No.1 applied for the certified copies of the impugned judgment on 20/07/2019 and the same was

received on 30/07/2019.”

4. The otherside strongly resisted the application by contending that the application totally lacks bonafide and the story canvased by Applicant No.1 about his renouncing World, his spiritual work is fanciful and not acceptable. It is submitted that Applicant No.2- Chetan Shah was very well aware about the dismissal of the first appeal, but he did not bother to challenge the same within the stipulated period. It is argued that there was no relationship in between Applicant No.1 and Applicant No.2, but they had jointly acquired the property and thus, there was no reason for Applicant No.2 for not filing the appeal. According to the Respondents, neither Applicant No.2 gave any justifiable reason nor has filed affidavit in support. The Respondents would submit that the story about loss of power of attorney has been developed in subsequent affidavit, which is totally unreliable.

5. Learned Counsel for the Respondents took me through the Order of this Court dated 23 March 2022, wherein this Court has expressed that there is no supporting material to the cause canvased for delay, the delay does not appear to be bonafide and, therefore, the Applicants were permitted to file additional material. In this regards, it is submitted that instead of producing supporting

documents, merely an additional affidavit has been filed to elaborate the earlier stand.

6. Careful examination of the affidavit of Applicant No.1-Chetan Khumbhawat reveals that the Applicants were well aware about the dismissal of the first appeal. He has contended that during the years 2017 to 2019, he was practically unavailable and was not in contact with his family or friends, as he took decision to renounce the World. It is stated that he had moved to village Rafadia, Gujrat State for a spiritual purpose. It is his contention that he had started working on the development of the Ashram. He has also registered the trust to that effect. It is contended that he had undertaken *paribhraman* (Pilgrimage) to the various parts of the Country for considerable period. The affidavit states that since he had not informed anyone about his whereabouts, he was untraceable and most of the time, he stayed in the Ashram and was at pilgrimage.

7. The affidavit further states that somewhere, in the month of May/June 2019, he returned back and inquired about the matter. He had obtained certified copy and handed over to the Advocate for filing appeal, and again left on pilgrimage by executing power of attorney in the name of his brother Bhagirath. It is stated that

unfortunately there was loss of the power of attorney and, thus, the appeal could not be filed in time. The affidavit further explains that in the second round, he went to a secluded place in Gir forest, Gujrath, hence, nobody was in his contact. When he returned back, he came to know that the power of attorney was lost by his brother and thus, the appeal was not filed. Then he collected papers from his erstwhile advocate and arranged to file appeal through another Counsel.

8. The affidavit of brother of Applicant No.1, namely, Mr. Bhagirath Gordhandas Kubawat has been filed, to supports the stand to the extent that his brother has adopted a spiritual work, stayed at Ashram and power of attorney was lost. He stated that again for 9 to 10 months he could not contact his brother.

9 The Respondents have filed reply denying all the contentions. It is stated that false and fabricated story has been cooked up to patch up the delay. It is argued that after the Order passed by this Court dated 23 March 2022, the Applicants instead of producing additional material, has merely elaborated his earlier stand in the affidavit. It is submitted that the story that Applicant No.1 was unavailable is not believable as neither the missing report was filed

nor public advertisement was issued. It is submitted that the entire application is vague bereft of dates. It is stated that the Applicants could have submitted documentary evidence about the registration of trust, going on pilgrimage, stay at Ashram etc. It is stated that even the name of the earlier Advocate has not been disclosed. The details of loss of power of attorney were not given.

10. There is no dispute that initially the suit was filed by the firm along with the present two Applicants. The Applicants were not related to each other, but had jointly acquired property rights. No reason is canvassed as to what precluded Applicant No.2-Chetan Shah to approach to the Court to challenge the impugned Order. Merely it has been stated that Applicant No.1 was looking after the entire affairs. Had it been the fact that Applicant No.1 went to pilgrimage and not traceable, then Applicant No.2 could have filed the Appeal as he had personal interest. No satisfactory explanation is coming to that regard.

11. The main ground is that Applicant No.1 adopted spiritual way and went untraceable. No documents have been produced in the form of police report or of other nature to show that he was totally untraceable. It is not the case that Applicant No.1 was not aware

about the decree of the first appeal. It is pertinent to note that after dismissal of the first appeal, he took two years to get the certified copy, but again he went to Village Rafadia. The story about the execution of the power of attorney to the brother and loss of it, does not gain support. It is evident that as and when there was a long time gap, it is only tried to patch up by stating that Applicant No.1 was untraceable.

12. Mr. Bhatt, learned Counsel appearing for the Applicants relied upon a decision in the case of **Collector, Land Acquisition, Anantnag Vs. Mst. Katiji**¹ to contend that the term “sufficient cause” has to be construed liberally. On the other hand, Mr. Gole, learned Counsel appearing for Respondent Nos.1, 3, 5, 8, 10 and 11 by placing reliance upon the decisions in the case of **Esha Bhattacharjee Vs. Managing Committee of Rangunathpur Nafar Academy**² and **Ajay Dabra Vs. Pyare Ram**³ would submit that if there are total lack of bonafide, explanation is fanciful, a delay cannot be condoned to take away right accrued in favour of the otherside. The appellant who seeks condonation of delay, therefore, must explain the delay to the satisfaction. It is true that the courts should not be pedantic in their approach while condoning the delay, but the reason must be

1 (1987) 2 Supreme Court Cases 107

2 (2013) 12 Supreme Court Cases 649

3 2023 SCC OnLine SC 92

genuine and bonafide.

13. Basically the term sufficient cause if not explained to the satisfaction of the Court, then the Court should not be prevented in its approach in declining to condone the delay. The explanation for the delay obviously for fanciful or imaginary explanation cannot be entertained. It is the case that the delay for more than 1000 days caused. Applicants on each occasion has merely stated that he renounced to the World. The explanation does not stand support from material.

14. Moreover, Applicant No.2-Chetan Shah could have taken steps, but he did not. No doubt the Court is expected to adopt justice oriented approach to do substantial justice. However, if delay is inordinate, unexplained, demonstrating total negligence, it does not deserve to have liberal approach. The entire gamut of facts would convey that Appellants were aware about the decision. Their conduct is totally negligent, explanation is fanciful and thus a huge delay does not deserve to be condoned to reverse the situation. Taking the overall view of the matter, the application lacks bonafide. The explanations are totally fanciful and not satisfactory. On such grounds, the rights which were created in favour of the

other party cannot be taken away. In view of that, the Application is rejected.

15. In view above, the application for condonation of delay in filing the Second Appeal is rejected. The ancillary Interim Application (St.) No.96365 of 2020 and Second Appeal (St.) No.96361 of 2020 do not survive and are dismissed accordingly.

(VINAY JOSHI, J.)