

**IN THE HIGH COURT AT BOMBAY
APPELLATE SIDE, BENCH AT AURANGABAD**

CIVIL APPLICATION NO. 2479 OF 2014
IN
APPEAL FROM ORDER ST. NO. 1557 OF 2014

Sow. Gangamani w/o. Suresh Phatale
and Another

....Applicants

Versus

Smt. Bilkisbanu w/o. Sk. Haabib @ Babu
and Another

....Respondents.

Mr. A.T. Ghute, Advocate for applicants.

Mr. M.M. Patil-Beedkar, Advocate for respondent No. 1.

CORAM : T.V. NALAWADE, J.
DATED : 29th July, 2015.

ORDER :

1. The application is filed for condonation of delay of 20 days caused in filing appeal against the order made in Regular Civil Appeal No. 255/2012 which is pending in the Court of Principal District Judge, Nanded. In the appeal filed by present applicants against the judgment and decree of possession given against them, the appellate Court has granted stay to the execution of decree of possession subject to depositing of Rs. 60,000/- within eight weeks. Both the sides are heard.

2. It is the contention of the applicants, defendants,

judgment debtors that they had got certified copy of judgment and decree, but after getting the certified copy, it was misplaced by them and due to that, some time was wasted and so, the delay is caused.

3. The suit was filed by respondent for removal of encroachment on his agricultural land made by the present applicants and for possession of that portion. The Trial Court has given decree and in view of the judgment and decree, the plaintiff is entitled to recover the possession of 29 R. portion from the applicants. The relief of recovery of mesne profit is also there which follows such decree. The suit was filed in the year 2003 and it came to be decided in the year 2012. In view of these circumstances, while granting stay, the aforesaid condition is imposed by the appellate Court.

4. The stay in appeal under the provision of Order 41, Rule 5 of C.P.C. is within discretion of the appellate Court. The appellate Court is expected to consider the rights of both the sides and it is expected to see that the interest of the decree holder is protected as it is not certain as to how much time will be required for disposal of the appeal. Thus, ordinarily blanket stay is not granted. The defendants were found in illegal

possession and it cannot be said that for about 11 years they were not in illegal possession of 29 R. portion of agricultural land. It can be said that the appellate Court has made an attempt to see that in future decree holder will get compensation in respect of the use of land and the amount will be at the most Rs. 10,000/- per year.

5. Condonation of delay is within discretion of the Court and for getting the relief of condonation of delay, only sufficient cause is required to be shown. Parties are required to show that it has some arguable case. The order of aforesaid nature which is discretionary order will be under challenge in the appeal which the defendants want to file. This Court holds that aforesaid contentions do not make out sufficient cause and there is no prima facie case shown on merits for condonation of delay.

6. In the result, the application is rejected.

[T.V. NALAWADE, J.]

ssc/