

IN THE HIGH COURT OF JUDICATURE OF BOMBAY,
BENCH AT AURANGABAD

**CIVIL APPLICATION NO. 6638 OF 2012
IN
SECOND APPEAL (ST) NO. 2383 OF 2012**

Reda Kodba Bhil,
since deceased through L.Rs. ... Applicants

Versus

Vesta S/o Tedy Padvi
since deceased through L.Rs.
& others ... Respondents

.....
Mr. R.L. Kute , Advocate holding for
Mr. V.R. Dhorde, Advocate for Applicant
Mr. D.M. Pingale, Advocate for respondents Nos. 1-A to 1-H, 2, 3-A
to 3-E, 4, 5-A to 5-E and 6
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CORAM : RAVINDRA V. GHUGE, J.

Date of Reserving Order :- 20-03-2015

Date of pronouncing Order :- 26-03-2015

ORDER :

1. By this application, the legal representatives of Reda Kodba Bhil who is the original deceased defendant No. 2 in RCS No. 54 of 1990, have prayed for condonation of delay of about seventeen years and six months.

2. I have heard the learned Advocate for the respective sides for quite some time. Reda Kodba Bhil was defendant No. 2 in

R.C.S. No. 54 of 1990. The said suit was decreed by judgment dated 12-03-1991. Reda Kodba Bhil claimed that the said decree was ex-parte.

3. I have perused the said judgment dated 12-03-1991. Reda Kodba Bhil had himself instituted RCS No. 87 of 1987 seeking partition and separate possession. Said suit was decreed ex-parte. The plaintiffs in RCS No. 54 of 1990 who were not parties in RCS No. 87 of 1987, claimed that the said decree is not binding on them and, therefore, mutation entry 115 in favour of Reda Kodba Bhil showing the suit field in his name is not binding on the plaintiffs in RCS No. 54 of 1990.

4. The Trial Court concluded that Reda Kodba Bhil is in no way related to the plaintiffs in RCS No. 54 of 1990 and he is not a part of the family tree. The Trial Court, therefore, held that the plaintiffs in RCS No. 50 of 1990 were entitled to recovery of possession of their share in the suit field and defendant No. 2- Reda Kodba Bhil has no share in the suit property and as such, the decree passed in R.C.S. No. 87 of 1987 and the mutation entry No. 115 is not binding upon the said plaintiffs.

5. Reda Kodba Bhil, therefore, preferred RCA No. 92 of 1991 which was delayed by 221 days. On 24-01-1994, Reda Kodba Bhil passed away. No steps were taken to bring on record the legal representatives of Reda Kodba Bhil in RCA No. 92 of 1991(which is in fact Misc. Civil Application No. 92 of 1991 as it was an application for condonation of delay of 221 days). The Appeal Court by its order dated 09-06-1994 considered the fact situation and rejected the application for condonation of delay.

6. The applicants herein have filed Second Appeal on 18-01-2012 before this Court. It is apparent that the Second Appeal is belatedly filed by seventeen years and six months.

7. It is apparent that the passing away of Reda Kodba Bhil on 24-01-1994 was suppressed from the Appeal Court which rejected the application for condonation of delay caused in preferring the First Appeal on 09-06-1994. There is no explanation set out in the application as to what were the circumstances that prevented the applicants herein from bringing it to the notice of the Appeal Court that Reda Kodba Bhil had passed away.

8. Contentions set out in this application are that the applicants were unaware about the proceedings initiated by Reda

Kodba Bhil. They gathered information about the same in July 2009 which is practically after fifteen years. They preferred RTS Appeal No. 28 of 2009 before the Sub Divisional Officer (SDO), Taloda in relation to the mutation entry. Same was dismissed on 19th July 2010 and their Advocate did not inform them about the order passed by the SDO on 19-07-2010. They reside in a remote hilly area. With great difficulty they have preferred the Second Appeal.

9. I find from the pleadings in the Civil Application that the mutation entry has nothing to do with the order passed by the First Appeal on 09-06-1994. Reda Kodba Bhil was served with Court notice in RCS No. 54 of 1990. The first defendant admitted the entire claim made in the suit. Reda Kodba Bhil did not file his written statement and did not participate in the said proceeding. Nevertheless, the Trial Court concluded that Reda Kodba Bhil was in no way related to the plaintiffs and his RCS No. 87 of 1987 was decreed without impleading the plaintiffs in RCS No. 54 of 1990.

10. I have also considered the judgment of the SDO dated 19-07-2010 in RTS Appeal No. 28 of 2009. It is specifically noted that these applicants before this Court had got their names entered in the revenue record in place of deceased Reda Kodba

Bhil by mutation entry No. 127. This indicates that the contention of the applications that they had no idea about Reda Kodba Bhil being involved in any legal proceedings is a mere pretence.

11. The applicants have placed reliance upon the judgment of the Hon'ble Supreme Court in the case of *Collector, Land Acquisition, Anantnag and another V. Mst. Katiji and others*, AIR 1987 SC 1353 to support their contention that delay should be liberally construed and the Courts should not adopt a pedantic approach. I have gone through the said judgment in which the observations of the Apex Court in paragraph No. 3 are as under :-

“ 3. The legislature has conferred the power to condone delay by enacting S. 51 of the Indian Limitation Act of 1963 in order to enable the Courts to do substantial justice to parties by disposing of matters on 'merits'. The expression "sufficient cause" employed by the legislature is adequately elastic to enable the Courts to apply the law in a meaningful manner which subserves the ends of justice that being the life-purpose for the existence of the institution of Courts. It is common knowledge that this Court has been making a justifiably liberal approach in matters, instituted in this Court. But the message does not appear to have percolated down to all the other Courts in the hierarchy. And such a liberal approach is adopted on principle as it is realized that :-

1. Ordinarily a litigant does not stand to benefit by lodging an appeal late.
2. Refusing to condone delay can result in a meritorious matter being thrown out at the very threshold and cause of justice being defeated. As against this when delay is condoned the highest that can happen is that a cause would be decided on merits after hearing the parties.
3. "Every day's delay must be explained" does not mean that a pedantic approach should be made. Why not every

hour's delay. every second's delay ? The doctrine must be applied in a rational common sense pragmatic manner.

4. When substantial justice and technical considerations are pitted against each other, cause of substantial justice deserves to be preferred for the other side cannot claim to have vested right in injustice being done because of a non-deliberate delay.

5. There is no presumption that delay is occasioned deliberately, or on account of culpable negligence, or on account of mala fides. A litigant does not stand to benefit by resorting to delay. In fact he runs a serious risk.

6. It must be grasped that judiciary is respected not on account of its power to legalize injustice on technical grounds but because it is capable of removing injustice and is expected to do so."

12. However, in the instant case, the applicants have not been able to explain the delay of seventeen years and six months. Learned Advocate for the respondents has vehemently contended that the reasons cited are based on a pretence and the applicants are attempting to have their delay condoned on sympathetic grounds. Merely by stating that the applicants resides in hilly region and have resorted to a wrong remedy is a fallacious submission.

13. In the light of the above, I am unable to accept the submissions of the applicants. Facts and circumstances recorded here-in-above indicate that they had got their names entered in the revenue records in place of deceased Reda Kodba Bhil based

on the order passed by the Trial Court in RCS No. 87 of 1987 which was filed by Reda Kodba Bhil.

14. As such, this Civil Application is devoid of merit and is, therefore, rejected.

(**RAVINDRA V. GHUGE, J.**)