

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

CIVIL APPLICATION NO.5962 OF 2004
IN
SECOND APPEAL STAMP NO.16802 OF 2004

SURYABHAN BHAU SHIRSATH AND OTHERS APPLICANTS

VERSUS

MANKARNABAI SURYABHAN SHIRSATH RESPONDENTS
AND OTHERS

Mrs.R.S.Kulkarni h/f Mr.S.D.Kulkarni, Advocate for the applicants.
Mr.R.R.Karpe, Advocate for respondent Nos. 1 and 2.

(CORAM : RAVINDRA V. GHUGE, J.)

DATE : 18/03/2015

PER COURT :

1. The applicants, by this application, pray for condonation of delay of 435 days caused in lodging the second appeal.

2. Mrs.Kulkarni, learned Advocate for the applicants specifically points out the circumstances set out in paragraph No.5 of the application on account of which the delay was caused in lodging the second appeal. The applicants are labourers and doing the work of harvesting of sugar cane. They have to move about 50 kms. away from Ahmednagar and about 80 kms. away from Pimpalgaon Tappa so as to reach the sugarcane factory for harvesting. They were away

from home for practically a year or more.

3 Mrs.Kulkarni further adds that the second appeal is the only remedy available to the applicants. They do not derive any advantage by delaying the lodging of the second appeal. It is under fortuitous circumstances that they were precluded from lodging the second appeal.

4. Mr.Karpe learned Advocate appearing on behalf of the respondents vehemently opposes the civil application. He contends that there should be some finality to the litigation. The non-applicants are under a legitimate belief that the litigation has come to an end since the applicants did not prefer the second appeal within limitation. He further adds that delay cannot be condoned on the ground of sympathy. He, therefore, prays for the rejection of the civil application.

5. I have considered the submissions of the learned Advocates and have taken into account the reasons and circumstances set out by the applicants in the civil application. It does not appear that laches are attributed to the conduct of the applicants. They do not derive any advantage by delaying the lodging of the second appeal.

6. The Apex Court, in the case of Collector, Land Acquisition Anantnag and another Vs. Mst. Katiji and others [(1987) 2 SCC 107]

has observed as under :-

- “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.”*

7. In the light of the above, I am of the view that this civil application deserves to be allowed by imposing costs of Rs.5000/- (Rs.Five thousand only) upon the applicants. The second appeal, being the only hope for the applicants, therefore deserves to be registered.

8. As such, this civil application is allowed. Delay of 435 days, caused in preferring the second appeal, is condoned subject to the applicants depositing costs of Rs.5,000/- (Rs. Five thousand only) in this Court within a period of 3 (three) weeks from today. Upon depositing the amount, the second appeal be registered.

9. Mr.Karpe, learned Advocate, in fairness, graciously submits that the costs of Rs.5,000/- be donated to the Advocates' Bar Library, High Court, Bench at Aurangabad. In the light of the said statement, the applicants shall pay the said costs to the Advocates' Bar Library, High Court, Bench at Aurangabad as directed, failing which, this order shall stand recalled and this civil application shall stand rejected.

(RAVINDRA V. GHUGE, J.)