

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

SECOND APPEAL NO.130 OF 2015
WITH
CIVIL APPLICATION NO.3783 OF 2015

DASHRATH HARIBHAU KALUSE
AND ANOTHER

APPELLANTS/
APPLICANTS

VERSUS

BHASKAR UDDHAVRAO JADHAV

RESPONDENT

Mr.H.V.Patil, Advocate for the appellants/applicants.
Mr.L.M.Kulkarni, Advocate for the respondent.

(CORAM : RAVINDRA V. GHUGE, J.)

DATE : 27/03/2015

PER COURT :

1. I have heard the learned Advocates for the respective sides.
Issue is as regards refusal by the Appeal Court to condone the delay
caused in filing the appeal before the learned District Judge.

2. Having considered the submissions of the rival sides, the
substantial question of law is as follows :-

“Whether delay caused in filing an appeal, which is not
inordinate and is properly explained, should be condoned by taking a
pragmatic view ?”

3. The suit was preferred for seeking perpetual injunction against the defendants so as to restrain them from causing obstruction in the peaceful possession of the plaintiff over house no.1817 situated at Kranti Nagar, Patoda, Tal.Patoda, Dist.Beed. Admittedly, the delay was of 2 months in preferring the appeal before the Appeal Court for challenging the judgment dated 22/04/2013 delivered by the Trial Court in RCS No.204/2012.

4. Since there was delay in preferring the appeal, the appellants herein had preferred Misc.Civil Appl.No.573/2013. It was canvassed that the appeal should have been filed within 30 days from the date of the judgment and decree which is 22/04/2013. The summer vacation commenced from 04/05/2013 and the courts' reopened post-vacation on 10/06/2013. The appeal was filed on 27/08/2013 rather than filing it on or before 27/06/2013 by excluding the period of summer vacation.

5. The learned Advocate for the respondent has strenuously supported the impugned order. Contention is that the delay is deliberate and intentional. The appellants could have prepared their appeal in vacation and could have filed it immediately on the opening day post-vacation. There is no proper explanation to justify the filing

of the appeal on 27/08/2013, instead of filing it on the opening day which was 10/06/2013.

6. It is settled law that the issue of condonation of delay, if otherwise not inordinate and if no laches are attributed or attributable to the applicants, should be gone into liberally and the request for condonation of delay should not be viewed by adopting a pedantic approach.

7. In the instant case, I do not find that any laches are attributed or are attributable to the appellants. The delay cannot be termed as being inordinate. The reason assigned by the learned Appeal Court is that the applicants have not specifically explained the delay. It appears that the failure on the part of the applicants to explain each day's delay has therefore led to the passing of the impugned order.

8. The Apex Court in the case of Collector, Land Acquisition Anantnag and another Vs. Mst. Katiji and others (1987) 2 SCC 107 has considered the issue of condonation of delay and has observed as follows :-

" 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."*

9. In the light of the above, I do not find that the impugned order is sustainable. The Appeal Court has adopted a pedantic approach and has rejected the application only on the ground that the 2 (two)

months' delay is not properly explained.

10. In the light of the above, the impugned order dated 31/01/2015 thereby rejecting Misc.Civil Application No.573/2013 is quashed and set aside. The said application is allowed. Delay of 2 months is condoned subject to the condition that the appellants/applicants shall deposit an amount of Rs.2,000/- (Rs.Two thousand only) before the Appeal Court within a period of 4 (four) weeks from today. The Appeal Court shall therefore register the first appeal. Second appeal is disposed of accordingly. I, therefore, answer the substantial question in the affirmative as above. Decree be drawn accordingly.

11. Civil application No.3783/2015, in the light of the above, does not survive and is accordingly disposed off.

(RAVINDRA V. GHUGE, J.)