

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

CIVIL APPLICATION NO. 11608 OF 2013
IN SAST/8261/2013

GANESH RANGNATH TEMKAR
VERSUS
DEEPAK KADU NIRFAL AND OTHERS

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Advocate for Applicant : Shri Naik D.A.
Advocate for Respondent 1 : Shri Kotkar S.D.
Advocate for Respondents 2 & 3 : Shri Boiwar S.N. h/f Shri Deshpande S.R.

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CORAM : RAVINDRA V. GHUGE, J.
Dated: March 19, 2015

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PER COURT :-

1. Learned Advocate for the applicant has fairly pointed out that the delay is not of 245 days in lodging the Second Appeal, but is about 16 months.
2. The applicant has set out the reasons for seeking condonation of delay in paragraph Nos.3 to 11.
3. It is further submitted that the delay is neither intentional nor deliberate. The applicant gains no advantage by delaying the lodging of the Second Appeal. The proceeding, by way of the Second Appeal, is the last remedy available to the applicant.
4. Shri Kotkar and Shri Boiwar, learned Advocates appearing on behalf of the respondents oppose the Civil Application. Contention is that illiteracy cannot be a ground. Medical papers in relation to illness

mentioned by the applicant do not support the contention that the applicant was precluded by circumstances from preferring the Second Appeal. Since the reasons are not justifiable, the application deserves to be rejected.

5. Delay caused in lodging the Second Appeal is about 16 months. This is the last remedy available to the applicant. The Apex Court in the case of Collector, Land Acquisition Anantnag and another Vs. Mst. Katiji and others [(1987) 2 SCC 107], has observed while dealing with the application for condonation of delay, 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."

6. In the light of the above, Civil Application is allowed. Delay of about 16 months is condoned, subject to the applicant depositing costs of Rs.6,000/- in this Court within the period of six weeks from today. Upon depositing the costs, the Second Appeal shall be registered and the non-applicants will be at liberty to withdraw the said costs in equal share.

7. If the directions as above are not complied with by the applicant, this order shall stand recalled and the Civil Application shall stand rejected.

(RAVINDRA V. GHUGE, J.)

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