

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

CIVIL APPLICATION NO.9812 OF 2013
IN
SECOND APPEAL STAMP NO.11366 of 2013

KAVERIBAI DATTAPPA PATRE

APPLICANT

VERSUS

SANTOSH SURYAKANTRAO HANEGAONKAR
AND OTHERS

RESPONDENTS

Mr.M.M.Patil (Beedkar), Advocate for the applicant.
Mr.A.A.Mukhedkar, Advocate for respondent Nos. 1 and 2.

(CORAM : RAVINDRA V. GHUGE, J.)

DATE : 18/03/2015

PER COURT :

1. The applicant, by this application, seeks condonation of delay of 665 days caused while lodging the second appeal in this Court.
2. The applicant was 75 years old at the time of instituting the second appeal in 2013 in this Court. Reasons in support of the prayer for condonation of delay are set out in paragraph Nos.7, 8 and 9 of the application.
3. Mr.Patil, learned Advocate submits that the delay is neither intentional, nor deliberate. The applicant does not gain any

advantage in delaying the institution of the second appeal. In the event, this application is rejected, the applicant would be precluded from resorting to the remedy of second appeal, which is the last available remedy. She would therefore be rendered remediless.

4. Mr.Mukhedkar, learned Advocate appearing on behalf of the respondents, strenuously opposes this civil application. Contention is that the applicant had knowledge of the proceedings before the Trial Court as well as the Appeal Court. She had engaged an Advocate throughout. Despite injunctory / prohibitory orders dated 24/11/2008 passed below Exh.5, the applicant alienated a portion of the suit land by executing a registered sale deed. She had therefore attempted to frustrate the proceedings initiated against her and had therefore acted in a manner which can be said to be deliberate and intentional. Laches are therefore attributable to her conduct.

5. I have considered the submissions of the rival sides. In so far as the contention of Mr.Mukhedkar as regards creating third party rights by the applicant are concerned, the applicant has already suffered its consequences in the judgment dated 15/03/2011 delivered by the Appeal Court in RCA No.92/2008 and 107/2008.

6. The remedy of second appeal is therefore the only remedy left for the applicant so as to seek redressal of her grievance. I do not find that she would derive any advantage by delaying the lodging of the second appeal.

7. 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 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."

8. In the light of the above, the civil application is allowed. Delay of 665 days caused in lodging the second appeal is condoned subject to the applicant paying costs of Rs.10,000/- (Rs.Ten thousand only). The said amount shall be deposited by the applicant in this Court within a period of 6 (six) weeks, failing which this order shall stand recalled and the civil application shall stand rejected.

9. Upon depositing the costs, the second appeal shall be registered. The non-applicant Nos.1 and 2 shall be at liberty to withdraw the costs in equal share. I am not awarding costs to non-applicant Nos. 3 and 4 since they have not caused their appearance despite having been served.

(RAVINDRA V. GHUGE, J.)