

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

SECOND APPEAL NO.456 OF 2012

1. Limbaji s/o Baburao Shendge,
Age 60 years, Occu.Agriculture,
& Pensioner, R/o Kittu Adgaon
Taluka Majalgaon, Dist.Beed
 2. Kadaji s/o Jija Burkute(died)
through his L.Rs.
 - 2-1 Kausalyabai w/o Kadaji Burkule,
Age 55 years, Occu.Labour,
R/o as above, at present
Lahamewadi, Taluka Majalgaon,
District Beed
 - 2-2 Ashruba Kadaji Burkule,
Age 35 years, Occu.Labour
R/o as above
 - 2-3 Rajmati Bhujagrao Pawar,
Age 30 years, Occu.Labour,
R/o as above
- ..Appellants

Versus

1. Ramakisan s/o Suryabhan Khatal,
Age 47 years, Occu.Agriculture,
R/o Payatawaladi, Taluka Majalgaon,
District Beed
 2. Rangnath s/o Mahadu Thete (abated)
 3. Vishwanath s/o Govindrao Deshmukh
Age major, Occu.Agriculture,
Doctor, R/o Saptshringi bungalow,
In front of Gajanan Maharaj Temple,
Pundlik nagar, Aurangabad
 4. Shakuntala w/o Vishwanath Deshmukh,
Age major, Occu. Household,
R/o as above
 5. Madhukar Gangadhar Tehare,
Age 45 years, Occu.Labour,
R/o Mechanical Division,
Behind Gajanan Maharaj temple,
in front of Hedgewar Hospital
Garkheda Parisar, Aurangabad
- ..Respondents

Mr S.B.Bhosle, Advocate for appellants
Mr Vivek Bhavthankar, Advocate for respondents 1 and 5
Mr V.C.Patil, Advocate h/f Mr S.M.Godsay, Advocate for respondents 3 and 4

CORAM : N.W. SAMBRE, J.
DATE : 30th January 2015

PER COURT

1. This second appeal is by the plaintiffs against the judgment delivered by the learned lower appellate Court i.e. District Judge-2, Majalgaon in Misc.Civil Application No.31 of 2005 on 30th March 2012, whereby the said Court has refused to condone the delay of three years, one month and 28 days, as no sufficient cause was established.

2. Learned Counsel for the appellant while assailing the said judgment submits that there was sufficient cause established before the lower appellate Court and delay ought to have been condoned. In support of his contention, he has relied upon the judgment of Apex Court in the matter of **M.K.Prasad Vs. P.Arumugam, reported in AIR 2001 SC 2497** so as to canvass that the cause cited in support of condonation of delay is required to be taken into account, not the length of the delay.

3. Mr Bhavthankar, learned Counsel for respondents 1 and 5 submits that the very conduct of the present appellants after the decision of the suit is required to be taken into account. According to him, after the suit of the present appellants was dismissed, the appellants collected the certified copy of the judgment, which is an admitted fact. He further disputed the very contention of the present appellants that for earning their livelihood, they were required to leave

the village. According to him, they have come out before the learned lower appellate Court that the appellants were very much in the village. He further urge that appellants have neither produced any documentary evidence, nor deposed in support of claim for condonation of delay by entering into the witness box.

4. Perusal of the order delivered in Misc.Civil Application No.31 of 2005 by the District Judge-2, Majalgaon reflects that though cause was sought to be canvass before the said Court in support of delay condonation, however, neither any documentary nor any oral evidence was adduced before the said Court. Least that was expected of the appellants was to justify the case for condonation of delay by placing on record documentary or oral evidence in support of their claim.

5. The proposition of law that is sought to be relied upon by the appellants, though is not disputed by the respondents, however, the learned Counsel for the respondents submits that the very conduct of the appellants is required to be taken note of i.e. collecting the certified copy of the trial Court's judgment and then claiming that the appellants/plaintiffs were not available in the village for pursuing the remedy.

Said fact that can be inferred from the facts and claim made in the suit is, the appellants claimed to be allottee of land being landless persons from the government. If that be so, the appellants should have been more diligent in canvassing their case for condonation of delay.

6. In my opinion, no illegality or perversity is noticed in the order passed by learned District Judge, as sufficient cause for condonation of delay is not established by the present appellants. As such, the second appeal fails, stands rejected.

(N.W. SAMBRE, J.)

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