

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

**Civil Application No. 8893 of 2015
In
Second Appeal Stamp No.10500 of 2015
With
Civil Application No.8894 of 2015
And
Civil Application No.8895 of 2015
In
Civil Application Stamp No.10501 of 2015**

Tanubai W/o Manik Pawar
And Others.

.. Applicants.

Versus

Shrikant S/o Govindrao Sangvikar
And Another.

.. Respondents.

Shri. Sanjay A. Wakure, Advocate, for applicants.

Party in person for respondent Nos.1 and 2.

CORAM: T.V. NALAWADE, J.

DATE : 9th OCTOBER 2015

ORDER:

1) The application is filed for condonation of delay of 876 days caused in filing second appeal against the judgment and order of Regular Civil Appeal No.253/2008

which was pending in the Court of the District Judge-2 Osmanabad. The appeal filed by the present applicants against the judgment and decree of Regular Civil Suit No.113/2007 is dismissed by the first appellate Court. The suit was filed for relief of injunction by present respondents and relief of injunction is given in respect of 1/3rd portion of Gat No.623 in favour of the present respondents. Heard learned counsel for the applicant and hard respondent who was party in person.

2) It is the case of the applicants, original defendants that there were so many matters between the parties and the decision given in Regular Civil appeal was not within his knowledge. It is contended that due to want of knowledge, the appeal could not be filed in time. It is contended that only when some proceeding was filed for execution they got knowledge that decision was given by the appellate Court also against them. On this ground condonation of delay is claimed.

3) The opponents have strongly opposed the application.

4) For getting condonation of delay the applicants are required not only to show that there was sufficient cause but they are expected to show that they have some case to argue in the appeal. The submissions made show that the parties had filed many suits against each other and there was proceeding in respect of alleged rights of the present applicants under Tenancy Act. The portion in respect of which injunction is given, has come to the plaintiffs under the compromise decree of Regular Civil Suit No.127/1970 which was pending in the Court of the Civil Judge Junior Division Solapur. The applicants had tried to take decision on the basis of their contention that they were in possession on Batai basis, they were tenants. They had failed in that attempt as the matters in respect of right of the applicants were already decided.

5) The Courts below considered the effect of section 11 of the Civil Procedure Code. Further the defendants have failed to prove that they have any right in respect of the suit property. Thus unnecessary dispute was created by the defendants and there was the cause of action for the suit. Further there is concurrent finding in

respect of the possession which is a question of fact. There is huge delay of 876 days. In view all these circumstances and the ratio of the Apex Court in the case reported as **AIR 1962 SC 361 (Ramlal v. Rewa Coalfields Ltd.)** this Court holds that there is no sufficient cause shown.

6) In the result, the application stands dismissed. Civil Application Nos.8894 of 2015 and 8895 of 2015 are disposed of.

Sd/-
(**T.V. NALAWADE, J.)**

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