

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

Second Appeal No. 341 of 2015
(Stamp No. 21837 / 2010)

Shivnath s/o. Limba Adsule
(Since deceased through his L.Rs.)

1. Devaibai w/o. Shivnath Adsule
(Died).
2. Shravan s/o. Shivnath Adsule,
Age : 70 years,
Occupation : Labourer.
3. Sonerao s/o. Shivnath Adsule,
Age : 65 years,
Occupation : Labourer.
4. Sopan s/o. Shivnath Adsule,
Age : 60 years,
Occupation : Labourer.

All R/o. village Chincholirao,
Taluka & District : Latur.

5. Mainabai w/o. Prakash Kamble,
Age : 62 years,
Occupation : Household,
R/o. Budhara,
Taluka : Ausa, Dist. : Latur.
6. Pushpabai w/o. Sham Bansode,
Age : 60 years,
Occupation : Household,
R/o. Rangapur,
Taluka & District : Latur.

7. Bhagabai w/o. Yadav Ghodke, .. Appellants
Age : 58 years, (L.Rs. of Original
Occupation : Household, defendant no.1)
R/o. Taluka & District : Latur.

versus

1. Jyotiram s/o. Bhagu Chopade
(Since deceased through his L.Rs.)
- 1-A] Uttam s/o. Jyotiram Chopade,
Age : 40 years,
Occupation : Agriculture,
R/o. village Chincholirao,
Taluka & District : Latur.
- 1-B] Vinayak s/o. Jyotiram Chopade,
(Since deceased through his L.Rs.)
- 1-B-1] Smt. Meerabai w/o. Vinayak Chopade,
Age : 42 years,
Occupation : Household.
- 1-B-2] Ku. Puja d/o. Vinayak Chopade,
Age : Minor,
Occupation : Nil.
- 1-B-3] Ku. Pallavi d/o. Vinayak Chopade,
Age : Minor,
Occupation : Nil.
- 1-B-4] Sagar s/o. Vinayak Chopade,
Age : Minor,
Occupation : Nil.

Respondent nos.1-B-2 to 1-B-4 are
minors U/g. of their natural mother
i.e. respondent No. 1-B-1,
R/o. Village Chincholirao,
Taluka & District : Latur.

1-C] Padminbai Jyotiram Chopade,
Age : 65 years,
Occupation : Household,
R/o. village Chincholirao,
Taluka & District : Latur.

1-D] Bhagirathibai Nagnathrao,
Age : 35 years,
Occupation : Household,
R/o. Khandapur,
Taluka & District : Latur.

1-E] Sunita Sambhajirao Patil,
Age : 34 years,
Occupation : Household,
R/o. Warvanti,
Taluka & District : Latur.

1-F] Anita w/o. Ashtuk Lomte,
Age : 32 years,
Occupation : Household,
R/o. Thoratwadi,
Post : Ter,
Taluka & District : Osmanabad.

.. Respondents
(Nos.1-A, 1-B-1 to
1-B-4 and
1-C to 1-F -
L.Rs. of Original
plaintiff
&
No.2 - Original
defendant
no.2)

2. The State of Maharashtra,
Through the Collector, Latur.

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*Mrs. Madhaveshwari D. Thube (Mhase), Advocate,
for the appellants.*

*Mr. A.N. Sabnis, Advocate, holding for
Mr. V.D. Gunale, Advocate, for respondent
nos.1-A to 1-C.*

Respondent nos.1-D and 1-E served (Absent).

Mr. S.B. Ghute, Advocate, for respondent no.1-F.

*Mr. S.S. Tope, Additional Government Pleader, for
respondent no.2.*

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CORAM : A.V. NIRGUDE, J.

DATE : 21ST JULY 2015

ORAL JUDGMENT :

1. Heard learned Counsel for respective parties.
2. Admit. By consent, the Appeal is taken up for final hearing.
3. Following substantial question of law arises in this appeal :-

" Whether the learned Judge of the lower Court
erred in not condoning the delay which occurred
in bringing legal representatives of the deceased
respondent, on record, within time ? "

4. The facts leading to this litigation are little complicated and are required to be narrated in order to appreciate the overall situation.

(a) The appellants represented one Shivnath who was declared as an agricultural tenant, as per the provisions of the Hyderabad Tenancy & Agricultural Lands Act, 1950 [For short, "the Act"], in respect of the suit land in 1962. He was accordingly put in possession. The landlord -

Jyotiram challenged this order by filing an appeal and he also dispossessed Shivnath from the suit land. The landlord's appeal came to be dismissed in due course. Thereafter, Shivnath moved an application for recovery of possession under Section 98 of the Act, sometime in 1978. The said application was allowed in 1982. Jyotiram - the landlord preferred appeal before the Maharashtra Revenue Tribunal, but the same was dismissed on 22nd November 1982. This apparently was the end of the litigation between the parties and Jyotiram ought to have surrendered possession back to Shivnath. But this did not happen. Jyotiram filed a suit in 1988, being Regular Civil Suit No. 554/1988, in Civil Court, seeking declaration that the judgments of Revenue Court, as well as Revenue Tribunal, delivered in favour of Shivnath, were null and void and were not binding on him. Shivnath opposed this suit also. But, unfortunately for him, the Suit was decreed sometime in April 1999.

(b) Thereafter, Shivnath engaged an Advocate to file an appeal before the District Judge, against the said judgment and decree. This appeal was filed in 1991. But the Advocate did not remove office objections like depositing court-fee, etc. Therefore, the appeal was not registered till January 1994. After the appeal was registered, notice was issued to respondent - Jyotiram. When the notice of the appeal was sought to be served on Jyotiram at his house, it was found by the Bailiff of the Court, that Jyotiram had already died in 1993. Shivnath was accompanying the Bailiff at this time and he too learnt about Jyotiram's death. On 26th April 1994, Shivnath moved an application for bringing legal representatives of Jyotiram, on record. He mentioned in the application, that he learnt about Jyotiram's death a few days back and, that his application was within time,

and the appeal was not abated, etc. The legal representatives of Jyotiram came before the Court and opposed the application mainly on the ground of delay. They did not take a defence, that the cause of action did not survive against them. The main bone of contention from their side was that the delay is unpardonable. The learned Judge suggested to Shivnath, that he should also move an application seeking condonation of delay and accordingly, on 14th March 1995, an application for condonation of delay was also moved. On 1st March 2005, the learned District Judge held that the delay cannot be condoned. It is this order, that has been challenged in this Second Appeal.

5. Mr. A.N. Sabnis, learned Counsel appearing for respondent nos.1-A to 1-C, vehemently asserted that the entire story put forward by Shivnath, since beginning, was false. Shivnath being resident of the same village, could not have feigned ignorance about Jyotiram's death in 1993. He ought to have taken steps immediately after Jyotiram's death in 1993, for keeping the appeal alive. He, therefore, defended the impugned order. He also pointed out that since Shivram was grossly negligent, a valuable right was accrued to his client to get the appeal abated. He then pointed out that Shivnath and his legal representatives again were found to be grossly negligent when they even did not come before this Court, in time. As stated above, the impugned order was passed on 1st March 2005, but the present Second Appeal is filed in the year 2010. Even this delay is sought to be explained by putting the blame on the learned Advocate representing Shivnath and his legal representatives, who appeared for them in the lower appellate Court. (Shivnath, in the meantime, died sometime prior to filing of this appeal.)

6. The learned Counsel for respondent nos.1A to 1C has also placed reliance on two judgments, one of Rajasthan High Court, and the other of Hon'ble Supreme Court. Citations are as under :-

- [1] Judgment of Rajasthan High Court, At Jodhpur, in S.B.Civil First Appeal No. 50/2014
(LRs of late Shri Tahal Singh Vs. LRs of late Shri Jagga Singh & others), delivered on 14th February 2014.
- [2] Judgment of Hon'ble Supreme Court, in the case of **Balwant Singh (Dead) Vs. Jagdish Singh and others**, reported in **AIR 2010 SC 3043**.

Both these judgments reiterated the principle, that a negligent person should not be shown equity and, that right accrued to the other side should be protected carefully.

7. I am, however, inclined to condone the delay and refer the case back to the lower Court. Let me first decide as to whether the delay caused in filing of the present appeal deserves to be condoned. The appeal is delayed by about five years. The reason mentioned is that the Advocate appearing in the lower appellate Court did not inform the legal representatives of Shivnath, that their application was dismissed on 1st March 2005. They said that they learnt about this order only when they received notice from the Revenue Officer, on the application seeking mutation filed by Jyotiram's legal representatives. After filing of this appeal and application for condonation of delay, the learned Advocate appearing for the legal representatives of Shivnath immediately obtained

an order of stay and thereby stopped further progress in the suit. This indicates that the representatives of Shivnath were quite keen in protecting their rights and to continue with their First Appeal. This would also persuade me to conclude that the story, that their Advocate in the lower appellate Court did not inform them about progress of the litigation in the lower appellate Court, should be believed. The learned Advocate who appeared for Shivnath, since 1991 till 2005, appears to be a negligent Advocate. He filed appeal in 1991 but did not remove office objections till 1994. In the meantime, the sole respondent died. When the application for bringing legal representatives was moved, he again showed his inarticulateness by not making application seeking condonation of delay, if any. He was constrained to file such application in March 1995. In the meantime, he also did not take proper steps for bringing names of legal representatives of Jyotiram, on record. All these lapses are attributable only to the learned Advocate appearing for Shivnath and his representatives and, therefore, despite possible, that this Advocate would not even care to intimate to his client as to what had happened on 1st March 2005. In view of this, I am inclined to condone the delay that has occurred in filing this Second Appeal.

8. The main question is, whether the delay that occurred in making application for bringing legal representatives of deceased Jyotiram ought to have been condoned. The answer is in the affirmative. The delay was not much. The appeal was filed in 1991. The appeal was not made ready due to lethargy on the part of the learned Advocate. By the time, he made the appeal ready, sole respondent died in 1993 and the application for bringing legal representatives was moved in 1994. So, the delay was

of few months and in a case of this nature, the delay ought to have been condoned by granting some costs. This litigation should not have been prolonged till 2005. I am not inclined to go into the question, as to why this simple application for condonation of delay and for bringing legal representatives of the respondent, on record, and for setting aside of abatement, should consume nine years' time in the lower appellate Court. It is sufficient to say, that in usual circumstances, this application would have been allowed way back in 1994 and the appeal would have been decided on merits long time back. But we are aware, that the Courts are places where delay is a surety. Indeed, lot of inconvenience is caused to the respondents i.e. legal representatives of Jyotiram. If this appeal is allowed and the case is remanded back to the lower appellate Court for deciding the appeal on merits, the respondents deserve heavy costs. In my view, an amount of Rs. 25,000/- is appropriate costs to be imposed to the appellants in this case.

9. In the result, the Second Appeal is allowed.

(A) The judgment and order dated 1st March 2005, passed by the Ad hoc Additional District Judge, Latur, in Regular Civil Appeal No. 11 of 1994, is set aside, and the case is remanded back to the first appellate Court for decision on merits. The said Appeal stands restored to the file of the District Judge, Latur, for decision afresh, on merits. The said Appeal shall be decided expeditiously by the District Judge to whom it shall be assigned by the Principal District Judge, Latur.

(B) It is held that the delay in bringing legal representatives of deceased

respondent - Jyotiram is condoned. The abatement of Regular Civil Appeal No. 11 of 1994 is set aside.

(C) It is made clear, that the above order is passed, subject to deposit of costs of Rs. 25,000/- [Rupees Twenty Five Thousand] by the appellants to this Second Appeal, in this Court, within a period of two weeks from today. If the amount of costs is not deposited within the stipulated period, present Second Appeal shall stand dismissed and the impugned judgment and order dated 1st March 2005, shall stand revived, automatically, without further reference to the Court.

(D) If the amount of costs is deposited, as directed above, same shall be handed over to respondent nos.1-A to 1-F i.e. legal representatives of Jyotiram (Original plaintiff), or their Advocate, without further reference to the Court.

(A.V. NIRGUDE)
JUDGE

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