

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

**SECOND APPEAL NO. 156 OF 2012
WITH
CIVIL APPLICATION NO.6698 OF 2009**

Bashir Supadu Patel,
Deceased through his L.Rs.

- 1-A. Hajrabee Bashir Patel,
Age: 57 years, Occ: Housewife,
R/o. At post Nimbhoae Station,
Tq. Raver, Dist. Jalgaon.
- 1-B. Sophiya Aslam Patel,
Age: 37 years, Occ: Household,
R/o. At post Kandari (Bk),
Tq. Dharangaon, Dist. Jalgaon.
- 1-C. Rajjak Bashir Patel,
Age: 37 years, Occ: Driver,
R/o. At post Nimbhora Station,
Tq. Raver, Dist. Jalgaon.
- 1-D. Halimabee Salim Patel,
Age: 32 years, Occ: Household,
R/o. At post Pimpalgotha Sindhi,
Tq. Erandol, Dist. Jalgaon.
- 1-E. Irfan Bashir Patel,
Age: 28 years, Occ: Nil,
R/o. At post Nimbhora Station,
Tq. Raver, Dist. Jalgaon.
- 1-F. Sumaiabee Aslam Patel,
@ Firozabee Aslam Deshmukh,
Age: 27 years, Occ: Household,
R/o. At post Lohara, Tq. Balapur,
Dist. Akola.

...Appellants

versus

- 1. Smt. Sulochana Rangarao Pawar,
Age: 61 years, Occ: Agri., & Household,
R/o. Nimbhora (BK), Tq. Raver,
Dist. Jalgaon.

2. Hamid/Hanif Supadu Patel,
Age: 46 years, Occ: Agri.,
3. Munaf Supadu Patel,
Age: 48 years, Occ: Agri.,
4. Yusuf Supadu Patel,
Age: 40 years, Occ: Agri.,
5. Mehaboob Ajit Patel,
Age: 32 years, Occ: Agri.,
6. Smt. Aminabi Supadu Patel,
Age: 70 years, Occ: Agri.,
7. Sahrob Supadu Patel,
Age: 30 years, Occ: Agri.,

All R/o. Nimbhora Bk,
Tq. Raver, Dist. Jalgaon.

...Respondents

.....
Mr. Pramod P. Dhorde, Advocate for appellants
Mr. Vijay B. Patil, Advocate for respondent No.1
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CORAM : N.W. SAMBRE, J.

DATE : 10th JULY, 2015

ORAL ORDER :

The substantial question of law involved in the present appeal, which is arising out of an order rejecting the application for condonation of delay i.e. Misc. Civil Application No. 213 of 2003 by the District Judge-1, Jalgaon is; whether learned lower appellate Court has committed an error apparent on the face of record in refusing the condonation of delay when sufficient cause to that effect

was established?

2. The appeal was preferred by original defendant No. 4 , who suffered *exparte* decree for permanent injunction in Regular Civil Suit No.89 of 1999.

3. Along with first appeal, he preferred the application citing cause therein for delay caused in preferring the said appeal.

4. According to learned Counsel for the appellants, in view of provisions of Section 5 of the Indian Limitation Act, the cause that was cited before the lower appellate Court was sufficient enough for granting the application for condonation of delay.

5. The above referred submissions are objected by learned Counsel for respondent No.1 on the ground that the delay was not sufficiently explained. He would urge that appellant herein remained negligent and therefore, there was *exparte* decree, so also in the first appeal and as such, prayed for rejection of the present appeal.

6. Having considered the contentions of the parties, so also analyzing the issue, whether there was sufficient cause established by present appellant in moving the application for condonation of

delay, this Court has analyzed the cause mentioned in the said application. It is required to be noted that the present appellant while moving the application for condonation of delay has given sufficient cause, particularly as are narrated in paragraphs-2 and 3 of the judgment of the lower appellate Court refusing condonation of delay.

7. Learned lower appellate Court, while appreciating affidavit filed by applicant Bashir Patel, has noted that there is certificate issued by Medical Officer, Primary Health Centre, Nibhora, Taluka Raver, District Jalgaon on 29/08/2003, which is placed at Exhibit-2, same can be termed as insufficient cause and as such, rejected the application.

8. In my opinion, sufficient cause was established before the lower appellate Court, wherein lower appellate Court ought to have condoned the delay caused in preferring the appeal.

9. In view thereof, the appeal is hereby allowed. The order dated 02/03/2007 passed by the District Judge-1, Jalgaon in Misc. Civil Application No. 213 of 2003 is hereby set aside. For the reasons stated herein above, the said application stands allowed subject to payment of costs of Rs.2000/- (Rs. Two thousand only, to be paid to non-applicants, within period of four weeks from today,

before the lower appellate Court.

10. As a consequence thereof, the appeal also stands restored to the file of learned District Judge-1, Jalgaon.

11. Parties hereto agree that they shall appear before the concerned Court on 27/07/2015.

12. The hearing of the appeal before learned District Judge-1, Jalgaon is expedited.

13. The second appeal stands allowed in above terms. Consequently, the civil application is disposed of.

[N.W. SAMBRE, J.]