

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY.
BENCH AT AURANGABAD.
Civil Appellate Jurisdiction.**

CIVIL REVISION APPLICATION NO. 158 OF 2015.

ATMARAM AMBADAS PAWAR.
VERSUS
ARJUN RAMA WAKALE & ORS.

Appearance =>

Mr. Aniruddha A. Nimbalkar, Advocate for the Applicant.

Mr. Umakant Awate, Advocate for the Respondents.

Coram : S.V. Gangapurwala, J.

Date : 1st October, 2015.

Per Court :-

This Civil Revision Application is filed to set aside the Judgment and order dated 24th July, 2015 passed by the learned District Judge – 1 Osmanabad in M.A.No.64/15.

[2] Mr. Aniruddha A. Nimbalkar, learned counsel for the Applicant has strenuously contended that, the appellate court without considering that the Respondents have failed to show sufficient cause in not preferring the Appeal within time, has condoned the inordinate delay of 1 Year – 7 Months and 9 Days.

[3] Regular Civil Suit No.337 Of 2011 instituted by the Plaintiff – Aatmaram seeking removal of encroachment and possession was decreed on 23rd October, 2013.

[4] The respondents are interested in dealing with the said proceedings as they are in unauthorized possession of the property of which possession is sought.

According to the learned counsel for the Applicant the respondents had appeared in the trial court and filed application for setting aside ex parte order. Same was allowed subject to costs of Rs.500/- still, defendants did not appear before the court to contest the suit. Respondents are negligent. Therefore, they cannot be allowed to take benefit of their own wrong. According to the learned counsel, there was no cause much less sufficient cause to condone the delay.

[5] Mr. Awate, learned counsel for the Respondents supports the Judgment and submitted that, Respondents are poor persons. The Respondents got the knowledge of decision of suit after they appeared in the Execution Petition and, thereafter they immediately preferred the Appeal.

[6] I have considered the submissions canvassed by the learned counsel for the respective parties. It is trite that when cause for substantial justice and technical consideration are pitted against each other, cause for substantial justice will sub-served.

[7] The respondents had appeared in the suit and engaged the Advocate. Ex parte order was set aside on deposit of Costs of Rs.500/- on 03/08/12 however, thereafter defendants did not turn out. Judgment was passed in absence of the defendants.

[8] It is submitted that, defendants got knowledge only after the Execution Petition was filed. The Court has believed the said possibility. In the circumstances and the averments made the court has exercised the discretion. The learned District Judge – 1 Osmanabad allowed M.A.No.64/2015 on 24th July, 2015 condoned the delay in preferring the appeal subject to payment of cost of Rs.10,000/-. The appellate court has considered and adjudicated the matter holding that respective parties have every right to make submissions about merit of the Appeal.

[9] Considering the fact that, discretion has been exercised in plausible manner, in condoning the delay caused for preferring the Appeal, I am not inclined to entertain the present Application. As such Civil Revision Application stands disposed of. No costs.

(S.V. GANGAPURWALA, J.)