

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

**CIVIL APPLICATION NO. 14285 OF 2013
IN
SECOND APPEAL(ST) NO. 30782 OF 2012**

Bhimrao s/o Shyamrao Shelke
& another

... Applicant

Versus

Deenaji s/o Raghoji Shelke
died through L.R.

... Respondent

.....
Mrs. M.R. Jamdhade , Advocate for Applicants

.....

CORAM : RAVINDRA V. GHUGE, J.

DATED : 19th MARCH, 2015

PER COURT :

1. Delay caused in lodging the Second Appeal is about Ten years and nine months (3524 days).

2. Reasons cited in support of the request for condonation of delay is that the applicant telephonically contacted the Advocate on record and the said Advocate has not given the applicant any information. It is stated across the bar that the applicant has not initiated any proceedings against his Advocate on record for the purported refusal to give information about the proceedings to the applicants.

3. Issue is as regards an encroachment alleged against the applicant to the extent 454 R's land in Gut No. 472. The RCS No. 3/1998 filed by the plaintiff against the first defendant, applicant herein was dismissed by judgment and order dated 31-03-1999.

4. The original plaintiff preferred RCA No. 75/1999 against the applicants who are real brothers. Contention of the applicants is that their Advocate did not properly present the matter before the Appeal Court. The appeal was allowed. The judgment of the Appeal Court dated 30-12-2002, thereby allowing the First Appeal can be said to be ex-parte.

5. I have considered submissions of the learned Advocate on the judgment dated 30-12-2002 only to consider the situation as to whether the delay of ten years and nine months could be condoned in the event the judgment of the Appeal Court prima-facie could be said to be perverse and erroneous.

6. It is observed by the Appeal Court in paragraph 5 of its judgment that despite the absent of the applicants Advocate, the appeal was decided on its merits after considering the record.

7. In paragraph 7 of the judgment of the Appeal Court, which is the conclusions of the appeal Court based on the evidence adduced, indicates that the T.I.L.R. was appointed to measure land gut No. 472. Notice for measurement was issued to the litigating sides and the land was measured in the presence of both the sides on 30-01-1977. Panchanama was prepared, a sketch map was also drawn indicating that the applicants had encroached upon the land of the plaintiff to the extent of 5 R land in Gut No. 472. The applicants refused to sign the Panchanama. Similarly, the applicants have not questioned the report of the T.I.L.R. and did not apply for re-measurement if they had any grievance.

8. Evidence on record was also considered by the Appeal Court. 7/12 extract was also considered. It is thus, by a reasoned order that the Appeal Court had allowed the appeal.

9. The applicants have relied upon the judgement of the Apex Court in the case of *Collector, Land Acquisition, Anantnag and another V. Mst. Katiji and others*, AIR 1987 SC 1353 and in the case of *N. Balakrishnan V. M. Krishnamurthy*, AIR 1998 SC 3222.

10. In the *Collector, Land Acquisition, Anantnag* judgment (supra), the appeal was time barred by four days. In the case of *N. Balakrishnan* (supra), delay was of 883 days. So also, an ex-parte decree was questioned. In the instant case, the only explanation put forth by the applicants is that they had made a telephone call to their advocate who supplied no information to them. Barring this statement, no other circumstances are cited so as to convince this court that the delay of ten years and nine months can be condoned.

11. In the light of the above, I do not find that the delay of 10 years and 09 months deserves to be condoned. Civil Application is, therefore, rejected.

(**RAVINDRA V. GHUGE, J.**)