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

CIVIL APPLICATION NO.14768 OF 2013
IN
SECOND APPEAL (STAMP) NO.31356 OF 2013

WITH
CIVIL APPLICATION NO.14769 OF 2013
IN
SECOND APPEAL (STAMP) NO.31356 OF 2013

GOPAL HARI WAGHOLE
VERSUS
PARASRAM TULSIRAM. DIED. THROUGH L.RS. PARUBAI NARHARI
BHORGE AND OTHERS.

.....
Mr.Hemant Surve a/w Mr.Kshitij Surve, Advocates for the Applicants.
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CORAM: RAVINDRA V. GHUGE, J.

DATE :- 26th March, 2015

Per Court:

(a) Civil Application No.14768/2013:-

1 The Applicant, by this Civil Application No.14768/2013, seeks
condonation of 4290 days' delay caused in lodging the Second Appeal.

2 The Applicant has set out the reasons in support of his request
for condonation of delay in paragraphs 2 to 8 of the application. The delay
is of about 11 years and 09 months.

3 The reasons assigned by the Applicant can be summarized as follows:-

- (a) The Applicant claims to have approached an Advocate by name Mr.PG.Deshmukh at Aurangabad.
- (b) The Applicant claims to have handed over the papers and some fees to the said Advocate.
- (c) The first appeal being RCA No.220/1995 had abated on account of the death of the sole Respondent.
- (d) The Advocate, therefore, called upon the Applicant to submit a death certificate.
- (e) The death certificate is claimed to have been supplied to the Advocate in February, 2003.
- (f) The Advocate assured the Applicant of filing the Second Appeal.
- (g) On 22.10.2013 the Applicant claims to have come to Aurangabad since his niece was to undergo a medical test.
- (h) The Applicant searched for the said Advocate and was informed that he had passed away.
- (i) The Applicant claims to have met the Advocate's clerk (name not stated in the application) who guided him

and upon search, informed the Applicant that the Second Appeal was not filed.

- (j) The Applicant claims to have reached the residence of the deceased Advocate at taluka Jintur, District Parbhani and collected his papers.
- (k) On 16.11.2013, the Applicant instituted the Second Appeal.

4 In support of the prayer for condonation of delay, the Applicant has placed reliance upon the following judgments of the Honourable Supreme Court and this Court:-

- (1) AIR 2001 SC 2582 : Vedabai @ Vijayantabai Baburao Patil v/s Shantaram Baburao Patil and others.
- (2) 2012 (1) Mh.L.J. 168 : Bhausahab Hiranman Mokale v/s Laxman Shankar Gaikwad.
- (3) 2004(5) Bom. C.R. 700 : Gaurang V. Merchant v/s Madhliso & Company Pvt.Ltd..
- (4) Writ Petition No.447/2007 (Bombay High Court, Goa Bench) dated 04.04.2008. : Antonio Francisco De Silva v/s Mrs.Beatriz Norohna Cabral.
- (5) Misc. Civil Application No.106/2013 in Second Appeal No.84/2013 (Bombay High Court, Goa Bench) dated 08.05.2014 : Ismail Adam Khan v/s Kashinath Govind Naik.
- (6) 2014(4) Bom. C.R. 358 : Rhea Distilleries v/s Commissioner of Excise, Government of Goa.

5 I have considered the submissions of the learned Advocate for the Applicant and have also considered the view taken by the Honourable Supreme Court and by this Court in the judgments cited above.

6 It is noteworthy that laxity and negligence on the part of the Applicant seems to be quite evident. The first appeal being RCA No.220/1995 preferred by him had abated since the Applicant did not bring on record the legal heirs of the deceased sole Respondent despite the fact that both of them are neighbourers residing in single room each.

7 The Applicant has then contended that he had approached the deceased Advocate Mr.P.G.Deshmukh sometime in February, 2003. The death certificate of the deceased original Defendant is said to have been supplied to the Advocate in February, 2003.

8 By his own pleadings in the application, the Applicant submits that he came to Aurangabad on 22.10.2013 which is practically after 10 years and 8 months from February, 2003, in which month he had met the Advocate.

9 I am unable to accept the submissions of the Applicant that

the Applicant was unaware of the legal procedures. The Applicant has been in litigation against the original Defendant from 1992 onwards when the Applicant had instituted RCS No.708/1992. The period of 10 years and 8 months (from February 2003 upto October 2013) is vital since there is no explanation as regards this period except that the Applicant trusted his Advocate and rested on the belief that his Advocate would do the needful.

10 The Second Appeal and this Civil Application was instituted on 16.11.2013. The Applicant claims that he came to Aurangabad on 22.10.2013 and started searching for the whereabouts of his Advocate. Several events are narrated pursuant to 22.10.2013 including that the Applicant travelled to taluka Jintur in Parbhani district to search for the family members of the deceased Advocate and instituted the Second Appeal on 16.11.2013.

11 Insofar as the judgments cited are concerned, Vedabai's case (supra), which was before the Honourable Supreme Court had brought out an issue of delay of 07 days. It is observed in paragraph 5 of Vedabai judgment that if delay is inordinate, then, the prejudice caused to the other side has to be seen. The principle of advancing substantial justice is of prime importance.

12 In this backdrop, I have scrutinized the judgments of the Trial Court dated 26.09.1995 and that of the first Appeal Court dated 18.09.2001. The observations of the Trial Court in the operative part of the order are as under:-

- “(a) *The suit of plaintiff and counter-claim of Defendant is partly decreed hereby.*
- (b) *Directing Defendant not to obstruct over one room and varanda eastern side of suit plot already in possession of plaintiff, also restraining plaintiff not to obstruct Defendant's western portion of suit plot to the extent of one room and open site in possession of Defendant.*
- (c) *Directing parties to bear their own costs.*
- (d) *Decree be drawn up accordingly.”*

13 It is thus, apparent that the Applicant/ Plaintiff and the Defendant had both partly succeeded in their suit and the counter claim, respectively. Both who occupied one room adjacent to each other were restrained from obstructing each other's occupation and possession. RCA No.220/1995 preferred by the Applicant was abated.

14 It is noteworthy that the deceased Defendant (Parasram Tulsiram) had also preferred RCA No.221/1995. Upon his demise, his legal heirs came on record and his appeal was, therefore, prosecuted. This is a clear indicator of the fact that the Applicant herein was negligent. He failed to bring the legal heirs of Parasram on record despite the fact that

the legal heirs of Parasram came on record in the appeal preferred by Parasram.

15 By the judgment in appeal, the Applicant was directed to hand over the possession of the rooms and Varanda. The said judgment was delivered on 18.09.2001. It appears that the Applicant did nothing till February, 2003 which is practically 16 months after the first appeal Court delivered the judgment. After February, 2003, the Applicant was in deep slumber till October, 2013, for 10 years and 8 months.

16 In the judgments referred above, namely, in Gaurang V, Merchant, Antonio Francisco D'Silva, Ismail Adam Khan and Rhea Distilleries (supra), the delay was for the periods ranging from 30 days to 2972 days. The ratio laid down is that sufficient cause must be indicated and the explanation for the delay ought to be acceptable. Though sufficient cause should be construed liberally, the acceptability of the explanation for the delay is the prime issue. Even in the case of Ismail Adam Khan (supra) where the delay was of 2972 days in bringing the legal heirs of the deceased Respondent on record, it was established that the death certificate was submitted to the Advocate and on his negligence there was delay. Nevertheless, the proceedings were alive as regards the remaining Respondents.

17 In the instant case, though I may not disbelieve the Applicant outright, but the contentions set out in paragraphs 2 to 6 are all unsubstantiated. Besides the words of the Applicant, there is no evidence to support his submissions. Coupled with the above, his laxity over a period of 10 years and 08 months for which there is no acceptable explanation, I do not find that the delay of 4290 days (about 11 years and 09 months) deserves to be condoned.

18 As such, the Civil Application is rejected.

(b) Civil Application No.14769/2013:-

19 In view of rejection of the Civil Application for condonation of delay, this Civil Application does not survive and the same is also disposed of.

(RAVINDRA V. GHUGE, J.)