

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

**Civil Application No. 5037 of 2015
In
Second Appeal Stamp No.34781 of 2014
With
Civil Application No.5038 of 2015**

Rajkumar Narsingrao Auti.

.. Applicant.

Versus

The Municipal Council, Ausa
And Another .

.. Respondents.

Shri. Milind Patil, Advocate, for applicant.

Shri. B.L. Sagar Killarikar, Advocate, for respondent No.1.

CORAM: T.V. NALAWADE, J.

DATE : 9th OCTOBER 2015

ORDER:

1) The application is filed for condonation of delay of 443 days caused in filing appeal against the judgment and order of Regular Civil Appeal No.216/2009 which was pending in the Court of the Ad-hod District Judge-1 Latur. This appeal was filed by the present applicant against the decision of Regular Civil Suit No.496 of 2007 which

was filed by him for relief of perpetual injunction. The suit is dismissed by the trial Court and the decision is confirmed by the First Appellate Court. Heard both the sides.

2) For getting delay condoned the applicant is required to show that not only there is sufficient cause but the applicant is required to show that there is some case to argue in the appeal.

3) The suit was filed in respect of plot of size of 25 x 25 feet from Survey No.88 situated in Ausa, Tahsil Ausa, District Latur. This property belongs to the Government. It is the case of the plaintiff, present applicant, that first time in the year 1985 the local body had given open space on lease basis to the plaintiff. It is contended that by making temporary structure of shed the plaintiff had opened his hotel there. It is contended that there was no problem till 1998 but after that he faced threats of dispossession. It is contended that the local body started taking action for removal of the structure by contending that it was encroachment on Government land. It is his

case that he had taken steps for regularisation of the encroachment by filing application to the Government and that application was also processed. It is contended that ultimately the Government refused to regularise the things by informing that the space was reserved for extension of Bus Stand. It is his case that for some time Non Agriculture charges were also recovered from him by the Government.

4) As the plaintiff has no right as such to keep the possession and it is admitted that the space belongs to the Government, the Courts below have refused the relief of injunction in favour of the plaintiff. It is the case of the applicant/plaintiff that the delay is caused in filing appeal due to two untimely deaths in his family, he lost his mother and brother in the mean time. He has produced death certificates.

5) The delay is huge and the aforesaid circumstances do not show that it is properly explained. In view all these circumstances and the ratio of the Apex Court in the case reported as **AIR 1962 SC 361 (Ramlal v.**

Rewa Coalfields Ltd.) this Court holds that there is no sufficient cause shown. Further the aforesaid circumstances show that there is virtually no case to argue in the appeal. It is surprising that in spite of the aforesaid circumstances the structure of the plaintiff is not removed by the Government or the local body. This Court holds that the delay does not deserve to be condoned.

6) In the result, the application stands dismissed. Civil Application No.5038 of 2015 also stands disposed of.

Sd/-
(T.V. NALAWADE, J.)

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