

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

**SECOND APPEAL NO.368 OF 2015
WITH
CIVIL APPLICATION NO.830 OF 2015**

Ananda Dattu Jadhav and Ors. .. Appellants

vs.

Vasant Kesu Jadhav .. Respondent

Mr.Ravi P. Kadam for the appellants

Mr.A.B. Tajane for the respondent

**CORAM : K.K.TATED, J.
DATED : 14/10/2015**

PC:

1 Heard the learned counsel for the parties.

2 This Second Appeal is preferred by defendant challenging the judgment and decree dated 16.10.2014 passed by Ad-hoc District Judge, Sangli in Miscellaneous Civil Application No.84 of 2014 Ex.20 rejecting the appellant's application dated 15.3.2014 for condonation of four days delay in filing the appeal challenging the the Judgment and Decree dated 15.1.2014 passed by Civil Judge, Junior Division, Kadegaon in Regular Civil Suit No.97 of 2009.

3 For the sake of convenience, the nomenclature of the parties as

is stated in the suit will be referred to hereinafter as the appellant /defendant and respondent/plaintiff.

Few facts of the matter are as under:

4 In the present proceeding, the plaintiff filed Regular Civil Suit No.97 of 2009 for declaration, permanent injunction and alternate relief of possession. That suit was decreed by the Joint Civil Judge, Junior Division, Kadegaon by judgment and decree dated 15.1.2015 restraining the defendant by order of injunction from obstructing the plaintiff's possession over the suit property i.e. 1/2 portion of the G.P. No.235 admeasuring east-west 60 feet and south-north 40 feet, known as 'Pardiyachi Khuli Jaga'es GP No.224 situated within the limit of Village Asad.

5 Being aggrieved by the decree passed by the Trial Court, the defendant preferred Appeal before the district court. There was 4 days delay in filing the Appeal. Hence, the defendant preferred application dated 15.3.2015 for condonation of four days delay. That application was rejected by the Appellate Court. Hence, the present Second Appeal.

6 This court by order dated 15.7.2015 framed following questions of law and issued notices to the respondent for final disposal "Whether the lower appellate court has justified in dismissing the Appeal on the ground that no sufficient ground is made out for the condonation of delay of four days in filing the Appeal?

7 The learned counsel for the defendant submits that as soon as

the the Judgment and Decree passed by the Trial Court on 15.1.2014, they applied for certified copy immediately on 22.1.2014. He submits that the certified copy of the Judgment and Decree passed by Trial Court received on 17.2.2014 and thereafter, the defendant filed the appeal before the District Court. As there was delay of 4 days, the defendant preferred application for condonation of delay. He submits that the defendant took some time to club all the relevant papers for filing the appeal before the appellate court.

8 The learned counsel for the defendant submits that the appellate court erred in coming to the conclusion that the defendant failed to prove sufficient cause for condonation of 4 days delay in filing the Appeal. He submits that though the father of the defendant was present in court on the date of passing the judgment and decree by the Trial Court, the defendant took some time to file the application for certified copy. He submits that the appellate court failed to consider the fact that the defendant had to collect all the relevant documents as per his advocate's instruction to file appeal and in that process, there was delay in filing the appeal by 4 days. He submits that the appellate court failed to consider that the defendant has good chance of success. He submits that the appellate court failed to consider the fact that litigant should not suffer because of short delay in filing the appeal. On the basis of these submissions, the learned counsel for the defendant submits that this Hon'ble Court be pleased to set aside the the Judgment and Decree dated 16.10.2014 passed by Appellate court in Miscellaneous Civil Application No.84 of 2014 and condone the delay in filing the Appeal by 4 days and direct the appellate court to hear the defendant's appeal on its own merits.

9 On the other hand, the learned counsel for the respondent plaintiff vehemently opposed the present Second Appeal. He submits that the appellate court after considering the evidence of PW.No.1, Sandesh Ananda Jadhav Exh.17 held that the defendant failed and neglected to show sufficient cause for condonation of 4 days delay. He submits that the defendant's father was present in court when the Trial Court pronounced the the Judgment and Decree and inspite of that they failed to file the appeal within time. Hence, there is no substance in the present Second Appeal and same be dismissed with costs.

10 I have heard both the sides at length. It is to be noted that the Apex Court in the matter of ***N.Balkrishnan Vs. M. Krishnamurthy (1998) 7 SCC 123*** held that the object of fixing the time limit is not meant to destroy the rights. The law of limitation fixes a lifespan for such legal remedy for the general welfare. Paragraph Nos.11, 12 and 13 of the said judgment read thus :

11. Rules of limitation are not meant to destroy the right of parties. They are meant to see that parties do not resort to dilatory tactics, but seek their remedy promptly. The object of providing a legal remedy is to repair the damage caused by reason of legal injury. Law of limitation fixes a life-span for such legal remedy for the redress of the legal injury so suffered. Time is precious and the wasted time would never revisit. During efflux of time newer causes would sprout up necessitating newer persons to seek legal remedy by approaching the courts. So a life span must be fixed for each remedy. Unending period for launching the remedy may lead to unending uncertainty and consequential anarchy. Law of limitation is thus founded on public policy. It is enshrined in the maxim Interest reipublicae up sit finis litium (it is for the general welfare that a period be put to litigation). Rules of limitation are not meant to destroy the right of the parties. They are meant to see that parties do not resort to dilatory tactics but seek their remedy promptly. The idea is that every legal remedy must be kept alive for a legislatively fixed period of time.

12. A Court knows that refusal to condone delay would result in foreclosing a suitor from putting forth his cause. There is no presumption that delay in approaching the court is always deliberate. This Court has held that the words "sufficient cause" Under Section 5 of the Limitation Act should receive a liberal construction so as to advance substantial justice vide Shakuntala Devi Jain v. Kuntal Kumari, 1969 SC 575 and State of West Bengal v. The Administrator, Howrah Municipality, AIR 1972 SC 749.

13. It must be remembered that in every case of delay there can be some lapse on the part of the litigant concerned. That alone is not enough to turn down his plea and to shut the door against him. If the explanation does not smack of mala fides or it is not put forth as part of a dilatory strategy the court must show utmost consideration to the suitor. But when there is reasonable ground to think that the delay was occasioned by the party deliberately to gain time then the court should lean against acceptance of the explanation. While condoning delay the Court should not forget the opposite party altogether. It must be borne in mind that he is a loser and he too would have incurred quite a large litigation expenses. It would be a salutary guideline that when courts condone the delay due to laches on the part of the applicant the court shall compensate the opposite party for his loss."

11 In the present proceeding, application filed by defendant dated 15.3.2014 for condonation of delay shows sufficient cause in paragraph 3 of that application. Defendant specifically stated in paragraph 3 of that application that there was delay of 4 days in clubbing the relevant documents for filing Appeal before the court.

12 Considering the reason disclosed by the defendant in paragraph 3 of that application for condonation of delay and the law declared by the Apex Court, I am of the opinion that defendant has made out a case for allowing this Second Appeal. Hence, question of law answered in the negative. Hence, following order is passed:

- a) Second Appeal No.368 of 2015 is allowed.
- b) Judgment and Decree dated 16.10.2014 passed by Ad-hoc District Judge, Sangli in Miscellaneous Civil Application No.84 of 2014 Ex.20 is set aside.
- c) Miscellaneous Civil Application No.84 of 2014 Ex.20 dated 15.3.2014 filed by defendant for condonation of four days delay in filing Appeal challenging the the Judgment and Decree dated 15.1.2015 passed by Joint Civil Judge, Junior Division Kadegaon in Regular Civil Suit No.97 of 2009 is allowed.
- d) Appellate court is directed to register the Appeal filed by defendant and decide the same on its own merits.
- e) Hearing of appeal before the Appellate Court is expedited.
- f) Ad-interim protection granted by this court on 15.7.2015 to continue for four weeks from today with liberty to the defendant to apply afresh for interim relief.
- g) In view of disposal of Second Appeal, nothing survives in the Civil Application. Civil Application is dismissed as infructuous.

(K.K.TATED, J.)