

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

SECOND APPEAL NO.483 OF 2015

Damodar Vitthal Musudage
(Since deceased through Lrs)
1a) Ashok Damodar Musudage
(Since deceased through Lrs)
1a-1) Shailesh Ashok Musudage
& Ors. ... Appellants

Vs.

Shankar Bapu Alias Sakharam Musudage
(Since deceased through Lrs)
1a) Sanjay Shankar Musudage & Ors. ... Respondents

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Mr.Abhijeet A.Desai a/w. Vrushali L.Maindad, Advocate for the
Appellants.

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CORAM : RAVI K. DESHPANDE, J.

DATED : JULY 1, 2015.

P.C.

Misc. Civil Application No.834 of 2013 filed before the Lower Appellate Court seeking condonation of delay of 1083 days in filing an Appeal challenging the judgment and decree dated 6th April, 2011, passed in Regular Civil Suit No.27 of 1989 has been rejected by the Lower Appellate Court holding that no sufficient cause is made out for condonation of delay. Hence, this Second Appeal by the original defendant.

2 The appellant - defendant had filed regular Civil Suit No.838 of 1984 for partition and separate possession which was decreed. Subsequently, Regular Civil Suit No.27 of 1989 was filed for grant of declaration that the decree passed in Regular Civil Suit No.838 of 1984 was obtained by practicing fraud is null and void. The appellants were joined in the suit as the defendants. They contested the suit which was decreed on 6th April, 2011. This decree was challenged in the Appeal before the Lower Appellate Court under Section 94 of the Code of Civil Procedure along with the application for condonation of delay of 1083 days. The Lower Appellate Court has rejected the application on 18th February, 2015, holding that the appellants in this Appeal have not specifically pleaded in their application as to when for the first time and how they came to know about the Judgment; simply blaming their concerned advocate before the trial Court and their poverty is not sufficient to bring their application within the scope of "*sufficient cause*" to condone the delay of 1083 days.

3 Mr.Desai, the learned counsel for the appellant has invited my attention to paragraphs 2 and 3 of the application for condonation of delay which are reproduced below:

“2. The applicants further submit that the applicants were not aware of the judgment and decree passed by the Hon'ble Court as the concerned advocate had not informed about the same. The Applicants further submits that the applicants being poor persons, and were fighting to meet their day to day needs for their livelihood and therefore could not come in the court and approach another advocate as they were not aware of the procedure of obtaining certified copy and filing the appeal. Thereafter the applicants tried to approach and engage another advocate, however the applicants could not get another advocate in time even after due diligence.

3 The Applicants submit that as the applicants being layman were not aware of the procedure of obtaining the Certified copy of the Judgment and Decree and thus some time was required to obtain the same and thus delay of 1083 days is occurred for filing the present Appeal. In these circumstances, the delay is required to be condoned in the interest of justice. If the delay is not condoned then the irreparable loss would be caused to the Applicants as the Applicants have sanguine hopes of success in the Appeal, on the other hand if the delay is condoned there will be no loss to the respondents as the Appeal would be heard on merits.”

Court in case of **M.K. Prasad Vs. P. Arumugam**¹. In paragraph no.8 of the said decision relied upon by the learned counsel is reproduced below:

“8 In the instant case, the appellant tried to explain the delay in filing the application for setting aside the ex-parte decree as is evident from his application filed under [Section 5](#) of the Limitation Act accompanied by his own affidavit. Even though the appellant appears not to be as vigilant as he ought to have been, yet his conduct does not, on the whole, warrant to castigate him as an irresponsible litigant. He should have been more vigilant but on his failure to adopt such extra vigilance should not have been made a ground for ousting him from the litigation with respect to the property, concededly to be valuable. While deciding the application for setting aside the ex-parte decree, the court should have kept in mind the judgment impugned, the extent of the property involved and the stake of the parties. We are of the opinion that the inconvenience caused to the respondent for the delay on account of the appellant being absent from the court in this case can be compensated by awarding appropriate and exemplary costs. In the interests of justice and under the peculiar circumstances of the case we set aside the order impugned and condone the delay in filing the application for setting aside ex-parte decree. To avoid further delay, we have examined the

1. 2001(6) SCC 176

merits of the main application and feel that sufficient grounds exist for setting aside the ex-parte decree as well."

5 He also relied upon a decision of the Punjab and Hariyana High Court delivered on 15th March, 2002 in the case of ***Dilbagh Singh Vs. Collector of Land Acquisition***. Relevant portion contained in paragraph 9 is reproduced below:

"9.

In this context, it is important to bear in mind that majority of people living in the rural areas of the country are illiterate and ignorant of their rights. They are also not aware of this intricacies of law and proceedings in the Courts and Tribunals. Most of the time, they are busy in earning their livelihood and suffer injustice at the hands of all and sundry including the State. Therefore, while considering the plea for condonation of delay raised by a peasant or litigant coming from rural area, the Court has to adopt an extremely liberal approach, more-so when the case involves depriving the applicant of his source of livelihood. If the old and antiquated rule that each day's delay should be satisfactorily explained is applied in such cases, then grave injustice would be done to a majority of population living in rural India and persons like the appellant would be deprived of their legitimate right to seek justice."

6 The learned counsel submits that the term of “*sufficient cause*” under Section 5 of the Limitation Act has to be construed liberally and the Court can impose heavy costs for condonation of delay.

7 Perusal of the contents of the application of condonation of delay shows that there is delay of 1083 days caused in filing an Appeal. The name of advocate who had failed to inform the date of the decision of the trial Court has not been stated. The application does not mention the date of knowledge of such decision. The application is shorn of details on the material aspects of causing delay in filing an Appeal. Undisputedly, the Appellant had filed Regular Civil Suit No.838 of 1984, which was decreed by the trial Court for partition and separate possession. This decree was the subject matter of challenge in Regular Civil Suit No.27 of 1989. The applicants had also participated in the proceedings before the trial Court. It is, therefore, not possible to believe that the applicants had no knowledge and were not aware of procedure of obtaining certified copy for filing the Appeal and approach his advocate. It is not possible to believe that the applicants could not get another advocate, even after the decision. There is absolutely no explanation for making out the “*sufficient cause*”.

8 No doubt, that the Court has to be liberal in condoning the delay which can be done even by saddling costs. This principle of law laid down in the aforesaid judgment cannot be disputed. Whether the applicants/appellants had made out a sufficient cause or not depends upon the facts and circumstances of each case. In the present case, there is absolutely no explanation and lack of bonafides in pleading material details in the application. In view of this, it cannot be said that the Lower Appellate Court has committed an error of jurisdiction or on facts to reject the application for condonation of delay. The Second Appeal is, therefore, dismissed.

(RAVI K. DESHPANDE, J.)