

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

CIVIL APPLICATION NO.1002/2015
IN
SECOND APPEAL (ST) NO.16451/2015
WITH
CIVIL APPLICATION NO.1003/2015

Shripati Hari Pishate & Ors. ... Applicants

V/s.

Mahadeo Shankar Mane & Anr. ... Respondents

Mr. Yogesh Sawant i/b. Yogesh Sawant & Associates for the Applicants.
Mr. Rajesh More for the Respondent No.1.

CORAM: K.K. TATED, J.
DATED : OCTOBER 26, 2015

P.C. :

1. Heard the learned counsel for the parties. This Application is made by the Plaintiff for condonation of 7 years and 47 days delay in preferring the appeal challenging the decree dated 29/01/2008 passed by the Appellate Court in Regular Civil Appeal No.64/2006.

2. In the present proceedings, the Applicant Plaintiff filed Regular Civil Suit No.116/2003 in the court of 3rd Jt. Civil Judge, Junior Division, Kolhapur for declaration and injunction, wherein the Respondent Defendant had filed counter claim. On the basis of the pleadings, the Trial Court framed following issues.

	ISSUES	FINDINGS
1	Do Plaintiffs prove existence of easement right with respect to the drainage water and rain water ?	In the negative
2	Do Plaintiffs prove that they are enjoying their easement right since long time ?	In the negative
3	Do Plaintiffs prove the agreement dated 19/12/1974 ?	In the negative
4	Do Plaintiffs prove that Defendants obstructed their possession and enjoyment over the suit property ?	In the negative
5	Do Plaintiffs prove that they are entitled for the declaration as prayed for ?	In the negative
6	Do Plaintiffs prove that they are entitled for the perpetual injunction as prayed for ?	In the negative
6-A	Whether the counter claim is within limitation ?	In the affirmative
6-B	Whether the Defendants are entitled for the relief claimed in counter claim ?	In the affirmative
7	What order and decree ?	As per final order

3. After considering the evidence on record, the Trial Court dismissed the suit filed by the Plaintiff and allowed the counter claim directing the Plaintiff to handover peaceful possession of the portion of 12 sq.mtr. as pointed out in Exhibit- 86 to the Respondent Defendant.

4. Being aggrieved by the decree passed by the Trial Court, the Plaintiff preferred Regular Civil Appeal No.64/2006. The Appellate Court dismissed the appeal on 29/01/2008.

5. In the meantime, the Respondent Defendant filed Regular Darkhast No.147/2008 as per the provisions of Order XXI Rule 35 of the Code of Civil Procedure, 1908.

6. As there was delay on the part of the Plaintiff to prefer the Second Appeal, the Plaintiff made present Civil Application for condonation of delay.

7. The learned counsel for the Plaintiff submits that in the present proceedings, the Advocate who appeared on behalf of the Plaintiff before the Appellate Court failed and neglected to inform them about the decree passed in the appeal. He further submits that even the courts below failed to consider the vital documents. He further submits Plaintiff made an Application for allowing them to adduce additional evidence as per order 41 Rule 27 of the Code of Civil Procedure, 1908. He submits that the said Application was rejected by the Court.

8. The learned counsel for the Applicant submits that the Plaintiffs are agriculturists by profession and not much educated. They were not aware of the procedure of law and were not aware of dismissal of appeal till they received an order for demolition on 23/02/2015 which was passed in execution Application dated 15/12/2014. Thereafter, they applied for certified copies on 29/05/2015 which was received on 04/06/2015. Then they filed Second Appeal on 16/06/2015. Therefore, there is seven years delay.

9. He further submits that the Applicant has good chance of success

in the present proceedings. He further submits that, if delay is not condoned, irreparable loss and injury will be caused to them. Hence, in the interest of justice, this Hon'ble Court be pleased to condone the delay in filing the Second Appeal and matter be heard on its own merits.

10. On the other hand, the learned counsel for Respondent No.2 Defendant vehemently opposed the Civil Application. He submits that the Applicant Plaintiff had knowledge about the decree passed by the Appellate Court dated 29/01/2008. He submits that in execution proceedings, the bailiff visited the suit premises in the year 2014. He further submits that on 18/09/2014 the Plaintiff and his son made a statement before Bailiff that they will remove a wall within one month. He further submits that these facts were recorded by the Executing Court in its order dated 23/02/2015 in paragraph 2. He further submits that though the Plaintiff had knowledge about the decree passed by the Appellate Court, they failed and neglected to prefer an appeal within stipulated time. Hence, there is no substance in the Civil Application and same be dismissed with costs.

11. I heard both the sides at length. In the present proceedings, the Appellate Court passed decree on 29/01/2008. Thereafter, the Applicant filed Application for certified copies on 29/05/2015 and it was collected on 04/06/2015. In the entire Application, the Applicant has not stated any reason why the Applicant took more than 7 years to make an Application for certified copies of decree passed by the Appellate Court. The reason given by the Applicant in paragraph 3 of

the Civil Application about inaction on the part of their Advocate who appeared in the Trial Court cannot be considered as sufficient ground for condonation of delay. The order passed by the Executing Court on 23/02/2015 in Regular Darkhast No.147/2008 shows that the Applicant Plaintiff had knowledge about the decree passed by the Appellate Court. Moreover, they made a statement before the bailiff that they are ready and willing to remove the wall within 1 month.

12. This Court in the matter of **Laxman Divekar Vs. State of Maharashtra 1998 (1) Mh.L.J 745** held that Court has no power to arbitrarily condone the delay in the name of advancing substantial justice.

13. The Apex Court in the matter of **Damodar Pillai Vs. South Indian Bank Ltd, 2005(5) All.M.R. 961 (SC)** held that hardship or injustice is not a ground for extending the period of limitation.

14. The Apex Court in the matter of **Pundlik Jalam Patil Vs. Ex.Engg. Jalgaon Medium Project and Ors, 2008(6) BCR 513** held that unless and until sufficient cause is shown, inordinate delay should not be condoned.

15. The Apex Court in the matter of **Commissioner, Nagar Parishad, Bhilwara Vs. Labour Court, Bhilwara & Anr, 2009(3) SCC pg 525** held that while dismissing an Appeal on the ground of limitation, going into the merits of the case is not allowed.

16. The Apex Court in the matter of **Oriental Aroma Chemical Industries Limited Vs. Gujarat Industrial Development Corporation reported in 2010 (5) SCC 459**, held that in the absence of sufficient cause, Court should not condone the delay.

17. The Apex Court in the case of **B. Madhuri Gaud Vs. B. Damodar Reddy, 2012 (12) SCC 693** held that if sufficient cause is not shown, delay should not be condoned.

18. The Apex Court in the matter of **Esha Bhattacharjee Vs. Managing Committee of Raghunathpur Nafar Academy 2013(12) S.C 450** held that if sufficient cause is not shown, application for condonation of delay needs to be rejected.

19. Considering the submissions made by the learned counsel for the Applicant, the averments made in the Civil Application and the law laid down by the Apex Court, I am of the opinion that the Applicant failed to make out sufficient cause of condonation of delay of seven years in filing the Second Appeal. Hence, the Civil Application stands rejected.

20. In view thereof, registration of the Second Appeal stands rejected.

21. Consequently, the Civil Application for stay of the impugned judgment and decree stands rejected.

(K.K. TATED, J.)