

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

SECOND APPEAL NO. 133 OF 2016

WITH

CIVIL APPLICATION NO. 2017 OF 2016

Dattatray Raghunath Mahale,
age 55 years, occup. Agriculture,
R/o Chikse, Taluka Sakhri,
District Dhule .. Appellant

versus

Laxman Raghunath Mahale,
age 50 years, occup. Agriculture,
R/o Chikse, Taluka Sakhri,
District Dhule .. Respondent

Mr. P. S. Paranjape, Advocate for appellant
Mr. S. P. Shah, Advocate for respondent

CORAM : SUNIL P. DESHMUKH, J.
DATE : 14th September, 2016

ORAL JUDGMENT:

1. Admit on following substantial question of law

" Whether there is sufficient cause for condonation of delay. ?

2. Heard learned counsel for the parties finally, by consent.

3. This second appeal arises out of order dated 19-12-2015 passed by District Judge-4, Dhule under which civil miscellaneous application bearing No. 122 of 2015 filed by present appellant seeking condonation of delay of about 55 days in filing regular civil appeal challenging the judgment and decree dated 30-03-2015 passed by Joint Civil Judge, Junior Division, Sakri, dismissing suit bearing regular civil suit no. 24 of 2009 filed by present appellant seeking injunction against the present respondent in respect of the property described in the plaint, has been rejected.

4. After hearing learned counsel for the parties, it appears that suit had been dismissed on 30-03-2015 and an application immediately thereafter had been moved for certified copies which were received at the end of appellant around 18-04-2015 and as such limitation of thirty days expired during summer vacation to the civil courts around 18/19-05-2015. The courts reopened on 08-06-2015 and application had been moved on 09-07-2015 and in the process delay has been caused in preferring appeal against trial court's decree.

5. According to learned counsel for respondent, delay from 08-06-2015 to 09-07-2015 has not been properly explained save

and except stating that father of the parties died, however, he had died on 08-05-2015.

6. Although this is being submitted so, it would have to be taken into account that the parties to the suit come from mofussil area and further that the appellant appears to have stated that although some lawyer had been instructed earlier on, he had, after the appellant had come out of religious obligations, had told that the matter will have to be lodged at Dhule and a lawyer will have to be engaged at that place and in the process some time has been consumed. It is in this context that the matter will have to be appreciated.

7. The appellate court in paragraph no. 7 of the impugned order has observed that proper treatment will have to be given to the delay and the courts will have to be liberal while dealing with application for condonation of delay, however, the appellant is required to give proper explanation in support of said application. In the circumstances, it appears that while further judgment had been delivered, the appellate court had been oblivious of discussion with lawyer and subsequently lawyer having told the appellant to approach Dhule based advocate which fact has not been taken in the account while rejecting application. In any case, it would be required to be taken into

account that the appellant does not appear to have derived any benefit by causing deliberate and intentional delay.

8. In the circumstances, the substantial question of law stands answered accordingly affirmatively.

9. Second appeal stands allowed.

10. Impugned order dated 19-12-2015 passed by District Judge-4, Dhule, dismissing civil miscellaneous application bearing No. 122 of 2015 filed by present appellant seeking condonation of delay stands set aside. civil miscellaneous application bearing No. 122 of 2015 stands allowed.

11. In view of aforesaid, civil application stands disposed of.

SUNIL P. DESHMUKH,
JUDGE

pnd