

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

SECOND APPEAL NO. 108 OF 2015
WITH
CIVIL APPLICATION NO.3407 OF 2015
AND
CIVIL APPLICATION NO. 15102 OF 2015

1. Manyar Hasankha Hanifkha
Age: 53 years, occupation :
Agriculture,
2. Hanifabi Hanifkha,
Age: 65 years, occup. Household,

Both residents of : At Songir,
Tluka and District Dhule
3. Shaikh Majid Shaikh Ismail,
Age: 56 yeas, occup. Labor,
4. Sufiyabi Shaikh Ismail,
Age: 61 years, occupation:household,
5. Rabiya Shaikh Ismail,
Age: 86 years, occupation: household, .. Appellants/
Orig.Defendants

Residents of : At village Advad,
Taluka Chopada, District Jalgaon

Versus

1. Rahimbeg Jamsherben Mirza,
Age : 72 years, occupation : Agril.
and Contractor, Resident of :
At Songir, Taluka and District Dhule
2. Jitunbee Ismail,
Age: 67 years, occup. Household,
Resident of : At village Advad,
Taluka Chopada, District Jalgaon
since deceased, hence through
Legal representatives :-

- 2A. Nabi Shaikh Jitru Manyar,
Age: 70 years, occup. Agril.,
R/o At villge Advad,
Taluka Chopada, District Jalgaon
- 2B. Samimbano Hasankhan Manyar,
Age: 45 years, occup. Agril.
R/o At Songir, Taluka and
District Dhule
- 2C. Rajjak Abdul Nabi Manyar,
Age 40 years, occup. Labour,
R/o At village Advad, Taluka
Chopada, District Jalgaon
- 2D. Shahinbano Firozkha Manyar,
Age: 38 years, occup. Agril.,
R/o At Songir, Taluka and
District Dhule
- 2E. Nisar Abdul Nabi Manyar,
Age: 35 years, occup. Agril.,
R/o at village Advad, Taluka
Chopada, District Jalgaon
- 2F. Ashpak Abdul Nabi Manyar, .. Respondents/
Age: 30 years, occup. Agril., [No.1 is orig.plaintiff,
R/o t village Advad, Taluka No. 2 is orig. Deft.
Chopada, District Jalgaon No. 4/App]

Mr. Mukul S. Kulkarni, Advocate for appellants
Mr. C. R. Deshpande, Advocate for respondent no.1
Mr. D. A. Madake, Advocate for respondents no.2A to 2F

CORAM : SUNIL P. DESHMUKH, J.
DATE : 21st September, 2016

ORAL JUDGMENT:

1. Admit. By consent of parties, heard finally.

2. Rejection of civil miscellaneous application no. 60 of 2012 under order dated 05-02-2014 by the District Judge-4, Dhule, by refusing to condone delay of 96 days in approaching the appellate court under regular civil appeal is the subject matter in present second appeal.

3. After hearing learned counsel for the parties, the question which may be stated to be substantially arise, is ;

" As to whether the impugned order dated 05-02-2014 by the District Judge-4, Dhule, refusing to condone delay in filing regular civil appeal would be sustainable in the facts and circumstances and the overall legal position emerging in the matters of condonation of delay ? "

4. The factual position which does not appear to be in dispute is, the parties to the second appeal claim ownership over property bearing C.T.S. No. 917 situated at Songir, Taluka and District Dhule under the transactions entered into in their respective favour through original holder of said property and as such tussle over title to the property had ensued litigation in the form of special civil suit no.152 of 2009 at the instance of present respondent No. 1 for declaration and possession. Said suit came to be decreed on 24-02-2012.

5. It further appears that application by present appellants – original defendants no. 1 to 3, 5 and 6 for certified copies of

the judgment and decree had been lodged on 27-02-2012 and the same were received at their end on 30-03-2012. Regular civil appeal had been presented in the appellate court on 02-07-2012 and in the process, there had been a delay of about 96 days and the civil miscellaneous application no. 60 of 2012 seeking condonation of delay in lodging said appeal has been dismissed under impugned order dated 05-02-2014 as stated hereinbefore.

6. The appellants have contended, they were under the impression that the period for filing appeal is ninety days and such an impression had been carried by them as per the understanding given to them by someone in the office of the court and non suspecting appellants had believed the same. This is the major reason under which delay is contended to have occurred.

7. Whereas, it is the case of the present respondent no. 1 - original plaintiff that the reason placed forth by appellants has no credibility and it is a runaway reason to get out of the inability to give appropriate justification for condonation of delay in lodging the appeal. As far as other reason is concerned, there has been enhancement in the appellate

jurisdiction of the district court from a long time even before suit has been decided and special civil suit itself had been valued below ₹ 2,00,000/- and as such appeal could have been lodged immediately after summer vacation had been over. However, the appellants have faltered in making approach as they were negligent and non-vigilant.

8. The appellate court while deciding the matter appears to have considered that, may be someone from the office of the court had given the appellants to understand that the appeal period is ninety days, however, it ought to have been got verified from the lawyer and more so when appellants had engaged a lawyer in the appellate court and not doing so is a symptom of negligence and non-vigilance. What appears to have weighed with the appellate court is that ignorance of law is not a sufficient cause and particularly that non-taking of proper advice from the advocate tantamounts to negligence.

9. Learned judge of the appellate court also appears to have considered the citation relied on, on behalf of the present respondent no. 1 that only a cause is not sufficient and what is necessary is that there should be subsistence of sufficient cause and the reasons which appear to have been

given for condonation may not tantamount to sufficient cause in the present proceedings. He has further considered other citation that expiry of limitation causes accrual of valuable right in the party which cannot be taken away for asking by defaulting party.

10. While the position appears as aforesaid, one may have to take into account that the litigation is in respect of immovable property, seeking declaration of title and possession and the appellants claim ownership through certain transaction, so is the case of respondent no.1-original plaintiff.

11. The suit by respondent no. 1 has been decreed and the appellants intend to proceed against the same as there appears to be such intention all along, albeit they have approached the court belatedly and purport to reason the same out to an erroneous impression and further to that the position from the recent past has been that the appeals from special civil suit were being carried to high court. The reasons given by the appellants may not be at the outset can be said to be implausible. It is not the case that appeals being carried to high court have a limitation period of ninety days,

whether it is a first appeal or a second appeal and for quite a long time the situation had been that generally, in respect of decisions in special civil suits, the appeals were required to be to high courts. Enhancement in jurisdiction appears to be in recent past before decision in special civil suit. The other fact that will have to be taken into account is that since the matter is in respect of immovable property, by causing deliberate or intentional delay, the appellants were unlikely to earn any benefit in the process.

12. In aforesaid circumstances, the guidelines as have been laid down in a decision by the supreme court in paragraph no. 3 of its decision in the case of *Collector, Land Acquisition, Anantnag and another vs. Mst. Katiji*, reported in *AIR 1987 SC 1353* would be useful which are reproduced hereinbelow for ready reference.

(1) *Ordinarily a litigant does not stand to benefit by lodging an appeal late.*

(2) *Refusing to condone delay can result in a meritorious matter being thrown out at the very threshold and cause of justice being defeated. Against this when delay is condoned the highest that can happen is that a cause would be decided on merits after hearing the parties.*

(3) *"Every day's delay must be explained" does not mean that a pedantic approach should be made. Why not every hour's delay. Every second's delay? The doctrine must be applied in a rational common sense pragmatic manner.*

(4) *When substantial justice and technical considerations are pitted against each other, cause of substantial justice deserves to be preferred for the other side cannot claim to have vested right in injustice being done because of a non-deliberate delay.*

(5) There is no presumption that delay is occasioned deliberately, or on account of culpable negligence, or on account of mala fides. A litigant does not stand to benefit by resorting to delay. In fact he runs a serious risk.

(6) It must be grasped that judiciary is respected not on account of its power to legalize injustice on technical grounds but because it is capable of removing injustice and is expected to do so.

13. In present case, since the delay is of ninety six days, it does not appear to be, in the circumstances, an inordinate delay and, therefore, I prefer to be guided by the guidelines of the supreme court as aforesaid. It further may be taken into account that a stickler;s approach may in the given circumstances lose a legitimate cause and jurisprudence abhors such a situation.

14. Having regard to aforesaid, I am inclined to answer the substantial question of law holding that the appellate court would have been guided by the guidelines of the supreme court as referred to hereinbefore, adopting a liberal approach.

15. The second appeal, in the circumstances, stands allowed.

16. The impugned order passed by dated 05-02-2014 by the District Judge-4, Dhule, rejecting civil miscellaneous application no. 60 of 2012 stands set aside. Said civil

miscellaneous application no. 60 of 2012 is allowed, subject to payment of costs of ₹ 5,000/- to be paid to present respondent no.1, to be deposited in the appellate court within a period of six weeks from the date of receipt of writ of this order by the appellate court. From then onwards, appellate court may proceed with appeal as expeditiously as possible, and dispose of the same preferably within a period of eight months. It is expected that the appellant before the appellate court would do all the things requisite for making the appeal ready in all respects for final hearing.

17. Record and proceedings be sent back.

18. Civil applications do not survive and stand accordingly disposed of.

SUNIL P. DESHMUKH,
JUDGE

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