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IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

SECOND APPEAL NO.552 OF 2015

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| 1. Yeshwant Nagnath Mule
Age – 35 years, Occ – Agriculture | APPELLANTS |
| 2. Adinath Janardhan Mule
Age – 34 years, Occ – Agriculture | |
| Both R/o Bhatkheda,
Taluka and District – Latur | |

VERSUS

- | | |
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| 1. Bhujang s/o Nivrutti Mule
Age – 58 years, Occ – Agriculture | RESPONDENTS |
| 2. Sushilabai w/o Bhujang Mule
Age – 53 years, Occ – Household, | |
| 3. Shrimant Bhujang Mule,
Age – 35 years, Occ - | |
| R/o Bhatkheda, Taluka and District – Latur | |

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Mr. Sanket S. Kulkarni, Advocate for the appellants
Mr. Sachin S. Deshmukh, Advocate for respondent No.3

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[CORAM : SUNIL P. DESHMUKH, J.]

DATE : 9th FEBRUARY, 2016

ORAL JUDGMENT :

1. Heard learned advocates for the appellants and respondent No.3. Despite service, no appearance has been caused on behalf of respondents No.1 and 2.

2. Rejection of application for condonation of delay in filing regular civil appeal against dismissal of suit by the plaintiffs gives rise to present second appeal.

3. Mr. Sanket Kulkarni, learned advocate appearing for the appellants contends that the appellate court has committed grave error in getting entangled into non germane aspects of the matter rather than the spirit and substance under section 5 of the Limitation Act. He submits that despite having made reference to that the appellant / applicant / plaintiff had not been keeping well from 25th October, 2007 and the decision having been rendered on 30th November, 2007, the appellate court unnecessarily got drifted away by consideration that the applicant / appellant / plaintiff having been in possession of certificate from a doctor about his lying indisposed, however, had not referred to specifically in the memo of the application is a deliberate act. According to learned advocate, as a matter of fact, the authenticity of the medical certificate cannot be doubted and has not been doubted, however, intention of the parties is tried to be flawed. He submits that by causing deliberate and intentional delay, the appellant / applicant, who is plaintiff, can hardly be said to have benefited. The appellate court has unnecessarily got overwhelmed by past circumstances,

which would hardly have relevance as far as condonation of delay is concerned. If anything has to be judged from the past events, those may be material to be considered while it comes to decision on merits in appeal. However, as far as sufficient cause for condonation of delay is concerned, reference to the past matter is of little consequence. He further submits that decision referred to and relied on for rejection of the application cannot be said to have any nexus of facts to the present case. Here, in the present case, it cannot be disputed that the appellant / applicant / plaintiff had been lying indisposed. The appellants / applicants have not gained any benefit by causing delay. According to him, it is rather out of context to consider that these are dilatory tactics. He submits that it cannot be disputed that the applicant / appellant / plaintiff had been lying indisposed and although has been purportedly denied, the same stands to be disproved by material on record, for there is indeed certificate in possession of the applicants.

4. Learned advocate appearing for respondent No.3 submits that it cannot be said that the applicant / appellant / plaintiff had been suffering any illness for, he had not referred to specific names of the doctors who had treated him. He has not explained each and every date. He submits that the judgment had been

pronounced in the presence of advocates for the parties and in the circumstances, delay cannot be said to have been properly explained.

5. After hearing the parties, following point arises for determination.

“Whether, in the circumstances, approach of the appellate court in the matter of condonation of delay had been proper, having regard to that generally the approach should be liberal and not pedantic, particularly when the plaintiff appears to have failed in the first stage of litigation ? ”

6. Perusal of the impugned order shows that the appellate court has been overwhelmed by an application moved by the applicant / appellant / plaintiff for amendment when resistance had been there to the application of condonation of delay on the ground that there is no specific reference to the name of doctor. Said circumstance appears to have reversed the fate of the application, for, the court has considered that despite being aware that the doctor had treated him and him being in possession of the certificate and not making reference in the application shows that the application is not *bona fide* and that certificate has been subsequently procured. In such circumstances, proper opportunity deserves to be given to the

applicant / appellant, although there is purported dispute about illness, the fact of existence of certificate by a doctor does not appear to have been disputed and having regard to magnitude of the delay, as has been appearing in the present matter, I do not deem it appropriate to remit the matter back for reconsideration. In the present case, it will have also to be taken into account that the applicants are farmers and the aspects which have been considered in paragraph No.12 of the impugned judgment would be rather out of place. In the circumstances, inconvenience caused to the respondents can always be mended by awarding appropriate costs.

7. In the circumstances, the point is answered accordingly. The second appeal is allowed. Impugned order dated 8th April, 2010 passed by District Judge, Latur in Miscellaneous Application No.179 of 2008 stands set aside, subject of course to the payment of costs of Rs.5000/- and the Miscellaneous Application No.179 of 2008 stands allowed. The amount of costs be deposited with the appellate court, within a period of four weeks from the date of receipt of writ of this order. Upon deposit of such amount, the respondents are entitled to withdraw the same and shall be equally distributed amongst the three respondents.

[SUNIL P. DESHMUKH, J.]