

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

**CIVIL APPLICATION NO. 4752 OF 2004
IN
SECOND APPEAL STAMP NO. 16766 OF 2001**

Bhaskar S/o Bapu Gate and another ...APPLICANTS

versus

Bapu S/o Aabu Gate and others ...RESPONDENTS

.....
Mr. S.S. Chaudhari, Advocate for applicants

Mr. K.K. Kulkarni, Advocate for respondent No. 3

.....

CORAM : SUNIL P. DESHMUKH, J.

DATED : 8th JANUARY, 2016.

Order :-

1. Heard learned counsel for appearing parties.
2. This civil application is filed for condonation of 807 days delay caused in filing second appeal against judgment and decree dated 25-02-1999 in regular civil appeal No. 138 of 1991 passed by the additional district judge, Osmanabad, confirming the judgment and decree dated 29-06-1991 passed by civil judge, junior division, Tuljapur, dismissing regular civil suit No. 28 of 1985 for partition and separate possession.
3. Learned counsel for applicants refers to that applicants are poor persons and had been earning their livelihood by doing the labour work. Applicant No. 1 had been away for sometime for eking out existence of family having four daughters and a son. Applicant No. 2,

his brother, is driver and has to move around the country. While appeal was to be preferred against judgment and decree dated 25-02-1999, economic position of the applicants had worsened and they could not collect enough finance to prosecute the appeal. In the circumstances, there is delay.

4. In response to the application, an affidavit-in-reply has been filed on behalf of respondent No. 3, referring to that application for certified copies of judgment and decree impugned in present second appeal had been moved belatedly on 10-06-1999 and that after getting the copies there is no reason given for such a delay. Poor economic condition of the applicants as contended has also been disputed. On the whole, it emerges that there is no specific denial of the contention of the applicants that two brothers had moved out for their existence and that in the circumstances, it appears that delay has been caused in preferring second appeal.

5. Though learned counsel for respondent No. 3 refers to a decision in the case of *Balwant singh (Dead) Vs. Jagdish Singh and others* reported in *AIR 2010 Supreme Court 3043* and especially head note "B", it appears that in said case, the court had considered that applicant had not come to the court with clean hands and they had taken inconsistent and incompatible pleas. Apart from aforesaid, it has to be borne in mind, the Supreme Court had considered the cause of delay in making application for bringing legal representatives of the deceased on record. It is in the factual scenario of that case the court made certain observations and appears to have refused to condone the delay. In

paragraph No. 10 of the judgment, the Supreme court had referred to paragraph No. 11 of the judgment in the case of *Perumon Bhagvathy Devaswom Vs. Bhargavi Amma* reported in 2008 AIR SCW 6025, which reads as under:

"11. The words "sufficient cause for not making the application within the period of limitation" should be understood and applied in a s reasonable, pragmatic, practical and liberal manner, depending upon the facts and circumstances of the case, and the type of case. The words "sufficient cause" in Section 5 of the Limitation Act should receive a liberal construction so as to advance substantial justice, when the delay is not on account of any dilatory tactics, want of bonafides deliberate inaction or negligence on the part of the appellant."

The court in the course of judgment also found that if the application is *bonafide* and is based upon true and plausible explanation, as well as reflect normal behaviour of common prudent person, normally judicial discretion should tilt in favour of such an applicant.

6. In the present case, observations of the Supreme court in the judgment reported in *AIR 1987 SC 53 (Basvantappa Vs. Gangadhar Narayan Dharwadkar and another)* to the effect that usually the litigants would not gain anything by causing deliberate or intentional delay and, as a matter of fact, delay generally runs against interest of the party, intending to challenge the orders aggrieved by would be pertinent. In the present matter, the applicants appear to have been unsuccessful at both stages, and as such, it cannot be said that delay having been

caused is deliberate and intentional, for, the applicants would be seldom able to get any benefit of the same having regard to especially when they interested in partition and separate possession of the properties.

7. Having regard to aforesaid and that specific averments in the application having not been particularly controverted about applicants being away from usual residence for eking out existence of family, I deem it appropriate to condone the delay subject to payment of costs for inconvenience caused to the other side.

8. Looking at that primarily occupation of either side predominately appears to be agricultural, the application is allowed subject to payment of costs of Rs. 7500/-. The amount of costs to be payable to other side shall be deposited in this court, within a period of six weeks from today. In case of failure to deposit amount of costs within stipulated period, application for condonation of delay shall be deemed to have been rejected.

9. Civil application stands disposed of.

Sd/-

(SUNIL P. DESHMUKH, J.)

MTK