

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

CIVIL REVISION APPLICATION NO. 124 OF 2016

Pratap Bhausahab Deshmukh,
Age: 58 years, Occ. Agri.,
R/o : Rawana Tq. Ghansawangi,
Dist. Jalna

...APPELLANT
(Ori. Plaintiff)

versus

1. Prashant Pradipkumar Deshmukh,
Age: 35 years, Occu. Agri.,
2. Shrikant Pradipkumar Deshmukh,
Age: 34 years, Occu. Agri.,
Both R/o Rawana Tq. Ghansawangi,
Dist. Jalna.

...RESPONDENTS
(Ori. Defendants)

WITH

CIVIL REVISION APPLICATION NO. 125 OF 2016

Pratap Bhausahab Deshmukh,
Age: 58 years, Occ. Agri.,
R/o : Rawana Tq. Ghansawangi,
Dist. Jalna

...APPELLANT
(Ori. Plaintiff)

versus

1. Pradip S/o Bhausahab Deshmukh,
Age: 51 years, Occu. Agri.,
2. Mena W/o Pradip Deshmukh,
Age: 47 years, Occu. Household,
3. Prashant Pradipkumar Deshmukh,
Age: 35 years, Occu. Agri.,
4. Shrikant Pradipkumar Deshmukh,
Age: 34 years, Occu. Agri.,
All R/o Rawana Tq. Ghansawangi,
Dist. Jalna.

...RESPONDENTS
(Ori. Defendants)

.....
Mr. Balhim R. Kedar, Advocate for Appellant
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CORAM : SUNIL P. DESHMUKH, J.

DATED : 7th SEPTEMBER, 2016.

Order :-

1. These two civil revision applications purport to take exception to granting of delay condonation applications filed by present respondents under orders dated 14-06-2016 by Principal District Judge, Jalna, in preferring the civil appeals against judgments and decrees dated 30-06-2015 in regular civil suits No. 36 of 2009 and 77 of 2010 passed by civil judge, junior division, Ghansawangi. Regular civil suit No. 36 of 2009 was filed by present applicant seeking cancellation of gift deed and possession of agricultural land. Whereas Regular civil suit No. 77 of 2010 was filed by present respondents seeking permanent injunction against present applicant. Regular civil suit No. 36 of 2009 was prior in point of time of than the one filed by respondents bearing regular civil suit no. 71 of 2010. Both the suits were simultaneously decided by the trial court under judgments and decrees dated 30-06-2015, decreeing regular civil suit no. 36 of 2009 and dismissing regular civil suit no. 77 of 2010.

2. The respondents-herein have preferred two separate appeals challenging the judgments and decrees referred to above, however, those are delayed. The respondents in applications for condonation of delay contended that appeals have been delayed by 64 days whereas the applicant had contended that the same are delayed by about 79 days.

3. Principal District Judge, Jalna under his orders dated 14-06-2015 allowed civil miscellaneous applications No. 167 and 168 of 2015 filed by present respondents for condonation of delay, condoned the delay. Aggrieved thereby the applicant is before this court.

4. Learned counsel Mr. Kedar for applicant vehemently contends that judgments and decrees were passed on 30-06-2015, applications by respondents for certified copies had been lodged on 01-07-2015, however, necessary compliance came to be made only on 13-07-2015, which according to him is after caveat having been lodged and notice of the same acknowledged by respondents around 06-07-2015. Certified copies were delivered to respondents on 14-07-2015. He submits that as such, period for making compliance ought not to be computed and the appeals ought to have been filed somewhere around 3rd/4th August, 2015 but the same have been lodged only on 14-10-2015. He submits that for such delay there is no plausible reason coming forth. Delay, which according to him, is intentional and deliberate since respondents are in possession of the suit property and they want to enjoy the same. The excuse being taken for condonation of delay about the mother being suffering and bed ridden is a lame excuse and unreliable one. Learned counsel contends that respondents' mother, namely, Ashabai had, in fact, been on pilgrimage to Pandharpur, which fact can be seen from the documents which had been annexed to the applications, particularly, the list of pilgrims which contains name of Ashabai. According to him, list is of the persons, who had participated in the pilgrimage. He, as such, contends that the certificate which has been

issued by clinic which appears to be prior in point of time, it lacks authenticity. He further contends that appeals came to be filed only after notice of execution had been received by the respondents and not before. He submits that reliance being placed by the appellate court on the judgment of Supreme Court in the case of *Collector, Land Acquisition, Anantnag Vs. Mst. Katiji* reported in *AIR 1987 SC 1315*, is a case wherein litigant had not derived any benefit, whereas in the present case it is an attempt on behalf of respondents to prolong wrongful possession, therefore, delay has been deliberately caused.

5. Perusal of impugned orders below Exhibit-1 in civil miscellaneous applications No. 167 and 168 of 2015 would show that certified copies of the judgments and decrees were received on 14-07-2015 and the applicants-present respondents could not file appeals within time as they were engaged in treatment of their mother Ashabai and appellate court has considered that certificate issued by Shrikrishna Physiotherapy and Rehabilitation Clinic depicts that Ashabai mother of respondents had been suffering from knee pains and lumber spine disc prolapse from 10-07-2015 and had been advised to take bed rest.

6. The appellate court after scanning the material has observed that said list of pilgrims cannot be said to authentically establish that Ashabai can be said to have participated in pilgrimage to Pandharpur. The appellate court has considered, may be name of Ashabai appeared in the list of pilgrims, however, she might not have actually participated in pilgrimage since she had been suffering from knee pains and lumber spine disc prolapse problem. The appellate court has also

considered that though every day's delay is not explained, the same will have to be considered on the background of guidelines and principles as are emerging from the judgment cited (*supra*) above and had reproduced the same in its order.

7. As such, it appears that the appellate court has considered the principles that ordinarily a litigant does not stand to benefit by lodging an appeal late, refusing to condone delay can result in a meritorious matter being thrown out at the very threshold and cause of justice being defeated and further that when delay is condoned the highest that can happen is that a cause would be decided on merits. It has also been considered that explanation for every day's delay should not be pedantically demanded and the doctrine will have to be applied in rationale common sense and pragmatic manner. It is further being considered that when substantial justice and technical considerations are pitted against each other, cause of justice should gain precedence over the other. It appears that the appellate court has considered reasons given by respondents would be sufficient cause for condonation of delay.

8. It appears that discretion has been exercised keeping in mind principles as referred to in the judgment cited *supra*. Exercise of discretion is in consonance with principles referred to above in the judgment of the Supreme Court. Delay is not inordinate, exercise of discretion by the appellate court being in accordance with principles as referred to by the Supreme Court and further that list which is sought to be relied on would not be an absolutely dependable, I do not see

that the judgments delivered exercising need interference in exercise of discretion of this court. Civil revision applications are, as such, stand rejected. In the process inconvenience caused to the applicant may be mended by imposing compensation of Rs.1000/- in each application. As such, respondents in aggregate are supposed to deposit Rs.2000/- in the appellate court for further disbursal to the applicant within four weeks from the date of receipt of writ of this order.

Sd/-

(SUNIL P. DESHMUKH, J.)

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