

**IN THE HIGH COURT AT BOMBAY
APPELLATE SIDE, BENCH AT AURANGABAD**

929 CIVIL APPLICATION NO. 9985 OF 2016
IN SAST/20671/2016

JANARDHAN TUKARAM PANCHAL
VERSUS
BHAUSAHEB RAJARAM MANE DIED LRS KAMALBAI AND ORS

...
Advocate for Applicant : Patil Indrale Anand V.

...
CORAM : T.V. NALAWADE, J.
DATED : 27th July, 2016.

ORDER :

1. The application is filed for condonation of delay of 18 days caused in filing second appeal against judgment and decree of Regular Civil Appeal No. 50/2007, which was pending in the Court of District Judge-2, Udgir, District Latur. The suit was filed by present applicant, appellant in the Court of Civil Judge, Junior Division, Udgir for relief of declaration and injunction and the suit was dismissed by the Trial Court.

2. It appears that the suit was filed in representative capacity by two persons, but during pendency of the matter, in the year 1999, one plaintiff died and only present appellant prosecuted the matter. The Trial Court had dismissed the suit on merit, though it was held that the suit could have been tried as a suit filed in representative capacity. The District Court has held

that proper procedure given in order 1, Rule 8 of Civil Procedure Code was not followed and so, the suit itself was not tenable in representative capacity. It is also held by the District Court that notice under section 180 of Bombay Village Panchayat Act was not given to Village Panchayat and for that reason also, the suit was not tenable.

3. For getting the condonation of delay, the party is required to show sufficient cause and party is required to show that there is some arguable case in the main matter. It is a discretionary relief and at the appellate stage, the Courts are not expected to lightly interfere in the orders made by the Courts in which the use of discretion is involved. In view of these circumstances, the learned counsel for applicant was asked to show that there is sufficient cause and also to show that there is arguable case in the second appeal.

4. The suit was filed in respect of one immovable property which is given house property number in village Hali. The property belongs to Government, though in assessment record, there is some entry made to show that carpenter community can use this property.

5. The submissions made show that it is not the case of present appellant, plaintiff that the property was allotted by the Government. It can be said that the plaintiffs were claiming easementary right and on that basis, they were claiming declaration. Some defendants, who are also from the same community appeared in the matter and contested the suit. One defendant took defence that suit property is his ancestral property and plaintiffs have filed suit to harass them.

6. The reasoning given by the Trial Court shows that there is virtually no record with the plaintiff, present appellant to show that the property was in the use of community of carpenter for the period required, though some record of assessment was created. If the property was situated within the limits of Village Panchayat, atleast the record of resolution could have been produced, but such record was also not produced. If the property was owned by the Government, Government ought to have been made defendant in the suit but that was not done. Admittedly, the procedure laid down under Order 1, Rule 8 of Civil Procedure Code was not followed, though the Trial Court has observed at one place that permission of the Court was obtained for registering the suit as representative suit. On both the sides, there were persons of carpenter community. The record is not in

favour of community or even the present appellant. Thus, there was virtually no arguable case to the plaintiff in the District Court and scope is further restricted for second appeal. As there is no arguable case, this Court holds that nothing can be achieved by condoning the delay. The contention of the applicant that after the decision of the District Court, he took some time for taking legal advise etc. and due to that delay is caused has no support of affidavit which could have been filed by advocate. Thus, there is no sufficient cause shown and there is no arguable case in the second appeal. In the result, the application stands rejected.

[T.V. NALAWADE, J.]

ssc/