

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

**SECOND APPEAL NO. 491 OF 2015
WITH
CIVIL APPLICATION NO. 11865 OF 2015**

Ashok S/o Ramappa Katkar,
Age: 49 years, Occ.: Labour,
R/o : Barwar Galli, Kadrabad,
New Jalna, Jalna.

...APPELLANT
(Ori. Defendant No.1)

versus

1. Deokabai W/o Mansingh Rajput,
Age: 79 years, Occ: Household,
R/o : Barwar Galli, Kadrabad,
Jalna.
2. Umesh S/o Rishi Rajput,
Age: 21 years, Occ: Labour,
R/o : Barwar Galli, Kadrabad,
Jalna.
3. Ramesh S/o Rishi Rajput,
Age: 20 years, Occ. Labour,
R/o: Barwar Galli, Kadrabad,
Jalna.
4. Jitu S/o Rishi Rajput,
Age: 18 years, Occ/: Labour,
R/o : Barwar Galli, Kadrabad,
Jalna.
5. Prakash S/o Mansingh Rajput,
Age: 40 years, Occ: Agril.,
R/o : Barwar Galli, Kadrabad,
Jalna.
6. Raju S/o Mansingh Rajput,
Age: 30 years, occ.: Agril.,
R/o: Barwar Galli, Kadrabad,
Jalna.
7. Pralhad S/o Ramappa Katkar,
Age: 59 years, Occ.: Service,
R/o : Barwar Galli, Kadrabad,
Jalna.

8. Kashinath S/o Ramappa Katkar,
Age: 48 years, Occ.: Agril.,
R/o : Kumbhephal, Ta.& Dist. Jalna.
9. Siddhuappa S/o Ramappa Katkar (Died)
Age: 51 years, Occ.: Agril.,
R/o : Barwar Galli, Kadrabad,
New Jalna, Jalna.
10. Hariappa S/o Ramappa Katkar (Died)
Age: 56 years Occ.: Agril.,
R/o : Malipura, Old Jalna, Jalna.

...RESPONDENTS

(Respondents No. 1 to 4
are original plaintiffs and
respondents No. 7 to 10 are
original Defendants No. 2 to 5)

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Mr. Mayur G. Deokate, Advocate for appellant
Mr. P.K. Ippar, Advocate holding for
Mr. S.J. Salunke, Advocate for respondents No. 1 to 4.

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CORAM : SUNIL P. DESHMUKH, J.

DATED : 3rd FEBRUARY, 2016.

ORAL JUDGMENT :-

1. Heard learned counsel for the parties.
2. **Admit.**
3. Upon hearing the parties, following substantial question of law arises for consideration:-

Whether appellate court had been right in dismissing the application for condonation of delay in filing regular civil appeal observing that the applicant is habitual in filing the proceedings belatedly without properly appreciating the circumstances under which the regular civil appeal was sought to be preferred?

4. By consent, appeal is heard finally.

5. Brief reference to the facts would be required. Regular civil suit No. 376 of 2001 had been preferred by present respondents No. 1 to 4 – original plaintiffs seeking cancellation of agreement and recovery of possession. Under judgment and order dated 03-08-2011, 2nd joint civil judge, junior division, Jalna, partly decreed the suit and directed defendants No. 1 and 2 to deliver possession of suit property but refused to grant request of cancellation of agreement.

6. Against aforesaid judgment and decree, defendant No. 1 – present appellant had preferred regular civil appeal belatedly after a period of 403 days, after expiry of period of limitation. The delay so caused, is sought to be accounted for stating that his daughter had been pregnant while decree had been passed and had suffered certain gynecological problems. In the circumstances, the appellant - applicant could not give proper instructions to the lawyer to file appeal against judgment and decree. It was his case that under genuine circumstances delay has been caused. Application was also supported by certificates issued by the doctors concerned. Thus, appeal had been preferred along with miscellaneous civil application for condonation of delay bearing No. 145 of 2012.

7. Application for condonation of delay was resisted by respondents No. 1 to 4 - original plaintiffs, contending that the applicant is habitually negligent in filing the proceedings and gynecological problems of daughter had been put forward to gain sympathy of the

court and that earlier on, similar was the case while appeal was preferred against *ex-parte* decree passed in said suit, wherein 47 days delay had been caused in filing the appeal. On that occasion, delay had been condoned and the matter had been remanded to the trial court for disposal in accordance with law. It is being submitted that the applicant- appellant is habitually negligent and thus causing the delay in filing the proceedings. As such, request may not be considered.

8. The appellate court has framed point for consideration about entitlement of the appellant for condonation of 403 days delay in preferring the regular civil appeal against judgment and decree dated 03-08-2011 in regular civil suit No. 376 of 2001 passed by 2nd joint civil judge, junior division, Jalna.

9. Learned counsel Mr. Deokate, appearing for applicant submits that the matter has been erroneously viewed by the appellate court and by taking liberal approach and the appellate court ought to have condoned the delay caused in preferring the appeal. Past proceedings appear to have overwhelmed in the present application for condonation of delay. He submits that the court ought to have seen that there is sufficient cause referred to under which delay had been caused. He submits that veracity of contentions has not been doubted, however, the court is overwhelmed by earlier proceedings and conduct and also belated filing of application for condonation of delay for setting aside *ex-parte* decree. He submits that there is sufficient record made available which has not been doubted by the court, however, on assumption that appellant could have filed appeal, immediately after

delivery of daughter and also referring to past conduct, the court has erroneously rejected the application. He submits that discretion ought to have been used in favour of applicant as generally, approach of the court should not be pedantic and applications are to be considered liberally.

10. On the other hand, Mr. Ippar holding for Mr. S.J. Salunke, learned counsel for respondents No. 1 to 4 - original plaintiffs submits that not only that appellant is habitual in prosecuting to cause belatedly, but even the reasons given are very general just to gain sympathy. It is difficult to believe that pregnancy of daughter and her illness thereafter as contended would take such a long time to make approach in appeal. He submits that appellant was negligent and habitually so, has come on record from his past conduct, which has been referred to by the appellate court in its order. Under the circumstances, he submits that it cannot be said that application contains sufficient cause in order to have condoned the delay in the matter.

11. After hearing learned counsel for parties and on perusal of order it appears that order has been passed on assumptions rather than objective satisfaction of the circumstances and thus it has been considered by the appellate court that delay in appeal of eleven months after delivery of his daughter would not be condonable. That apart, it is not disputed that the daughter of the appellant had been pregnant nor her gynecological suffering thereafter had been doubted. What appears to have weighed with court is that on earlier occasion

while appeal had been preferred against *ex-parte* decree, there was 47 days delay.

12. It is not the case of respondents No. 1 to 4 - original plaintiffs that daughter of the appellant had not been pregnant or for that matter she had not suffered any health problem thereafter. Having regard to that as well as that generally litigant hardly is benefited by causing deliberate or intentional delay, proper approach is required in the matters. In the present matter, admitted possession of the appellant over the immovable property is at stake. In such a case, it cannot be said that applicant/appellant had been deliberately whiling away the time. It would be worthwhile to note that while present matter was being considered, past conduct would have been relevant only in the case had there been no substance in the reasons for condonation of delay. In the circumstances, the matter needs proper and liberal approach and will have to be viewed accordingly.

13. Thus, the substantial question of law is to be answered in the negative holding that approach of the appellate court shows that it was oblivious in respect of the legal position and as regard the application for condonation of delay, the appellate court ought to have appreciated the evidence on record objectively, rather than getting overwhelmed by past circumstances.

14. The appeal, therefore, succeeds. The impugned judgment and order dated 20-07-2015 in miscellaneous civil application No. 145 of 2012 passed by *Ad-hoc* District Judge-1 Jalna, stands set aside on the

condition of payment of costs of Rs. 10,000/- to the respondents-original plaintiffs. The delay stands condoned. Regular civil appeal be accordingly registered in accordance with law and decided on its own merits.

15. The amount of Rs. 10,000/- deposited in the executing court by appellant pursuant to order dated 15th September, 2015 of this court, would be appropriated towards costs. Respondents No. 1 to 4 - original plaintiffs are allowed to withdraw the amount.

16. Interim relief granted by this court under order dated 15th September, 2015 to continue for a further period of eight weeks.

17. Pending civil application does not survive and stands disposed of.

Sd/-

(SUNIL P. DESHMUKH, J.)

MTK
