

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

SECOND APPEAL NO. 599 OF 2016

Grampanchayat Adgaon,
Tq. Erandol, Dist. Jalgaon.
Through its Sarpanh
Sindhubai Sitaram Mali
Age : 65 years, Occu. Agri.
R/o. Adgaon, Tq. Adgaon,
Dist. Jalgaon.

...Appellant

Versus

1. Sau. Kalpanabai Atmaram Patil,
Age : 45 years, Occu. Agriculturist,
R/o. C/o. Atmaram S/o. Bhila Patil,
Adgaon, Tq. Erandol, Dist. Jalgaon.

2. Shri. Bhivsan S/o. Bhila Patil,
Age : 55 years, Occu. Agriculturist,
R/o. Adgaon, Tq. Erandol,
Dist. Jalgaon.

...Respondents

.....
Mr Vijay B. Patil, Advocate for the appellant
Mr Uday S. Malte, Advocate for respondent No. 1
Respondent No. 2 served.
.....

**CORAM : SUNIL P. DESHMUKH, J.
DATE : 30TH NOVEMBER, 2016.**

ORAL JUDGMENT :-

1. Heard learned counsel for the appearing parties.

2. Facts and circumstances and the decision rendered in the application for condonation of delay filed by the appellant herein appear to give rise to following substantial question of law.

“Whether the approach of the Appellate Court in the matter of condonation of delay is sustainable on facts and in law and whether reasons for condonation of delay are to be considered liberally?

3. Factual position about which there is virtually no dispute is that the suit was instituted by present respondent No. 1 for removal of encroachment stated to have been committed by present appellant - *Grampanchayat* - defendant No. 1 over an area ad-measuring 57 Are of her property. On receipt of suit summons, the *Grampanchayat* is stated to have engaged a lawyer, who in turn, appears to have filed written statement on behalf of *Grampanchayat*. It further appears that, there had been no further prosecution at the instance of the defendant in the suit, and the suit as such proceeded with and had been decreed under judgment and decree dated 18.04.2013.

4. It is around May-2016, an appeal was preferred by the defendant-*Grampanchayat*, seeking condonation of delay of about three years and some days in lodging the same.

5. In delay condonation application, it has been contended on behalf of the *Grampanchayat* that during the regime of earlier elected body of *Grampanchayat*, there had been no prosecution of litigation in the suit on behalf of the *Grampanchayat* beyond lodging of written statement. Execution proceedings were initiated and a notice in respect of the same had also been served on the then *Grampanchayat* around 2013. However, no steps had been taken by the *Grampanchayat* then. An attempt to execute the decree had not borne fruits on account of subsisting electricity connection.

6. It has been further contended that, elections had taken place in the last quarter of 2015 and after new elections, the earlier body had not informed the new body about pendency of Regular Darkhast No. 1 of 2013 and about attempts of execution, perhaps under fear that their laxity may be exposed and no information nor documents were given to the new body and particularly to the *Sarpanch*. As such, it was only when disconnection of electricity supply took place on 27.12.2015, it came to fore that there has been some litigation, decision thereon and the proceedings in execution.

7. Thereafter, the *Grampanchayat* had made certain movement and had filed application in the executing Court and is

stated to have received necessary documents around April-2016 and, thereafter, the application has been filed seeking condonation of delay in preferring appeal.

8. The *Grampanchayat* has contended that, while written statement had been filed in the suit, the *Grampanchayat* then may be having information with regard to the litigation, however, thereafter, there have been frequent changes of Gramsevakhs for the village, who would not give information with regard to the litigation and the decision therein to the *Gramapanchayat* and under the circumstances, the appeal could not be preferred within the period of limitation.

9. Quite a lot of time had been consumed in procuring documents and accordingly the *Grampanchayat* had put in appearance in the execution proceedings. Around April-2016, *Grampanchayat* has received the documents enabling them to approach in appeal against the judgment and decree in the suit against the *Grampanchayat*.

10. These contentions were taken exception to in the reply filed by original plaintiff/decreed holder, contending that the reasons

underlying the application are not proper and genuine. Apart from general denial of the averments in the application, it is contended there is negligence in prosecution of the suit and that no particulars about the *Gramsevaks*, have been given as to who and when, they were transferred and further it has been contended that, in the application filed in the darkhast proceedings, different reasons have been given. It is contended that, present *Sarpanch* had no knowledge about the proceedings, is a contention not in accordance with the facts. The reasons given about the documents having been received in the midst of April-2016 are also not proper and correct.

11. It has been referred to that, no instruction *pursis* had been filed by the advocate for defendant and a letter accordingly had been issued by him. A notice for measurement also had been issued and served on *Grampanchayat* around 2011 as also the notice of execution proceeding had been served on the *Grampanchayat* around September 2013, and it had engaged a lawyer. The then *Sarpanch* had appeared and sought time to give response. Even possession warrant had been issued and the same had been served on the Village Development Officer, however, the same could not be executed due to electric connection. It is on these grounds, the application had been resisted.

12. The appellate Court, upon aforesaid, considered that the *Grampanchayat* had put in appearance in the suit through a lawyer as also it had received notice of execution proceedings and that these facts have not been disputed by the *Grampanchayat*. The Court further considered that, there is no reason given in the application as to why after appearance and filing of the written statement the suit had not been prosecuted by defendant No. 1. It is difficult to appreciate that thereafter no information has been given by the *Gramsevak* even after service of notice of execution proceedings. There were no particulars given about the changes in *Gramsevaks*. The Court considered that, after 27.12.2015 while the electricity supply had been disconnected, the appeal has been preferred only on 5.5.2016 and that it is incumbent to explain each days delay. Explanation about delay shows negligence on the part of *Grampanchayat* and since rights have accrued to the decree holder, those cannot be taken away.

13. Mr Vijay Patil, learned counsel appearing for the appellant earnestly urges this Court to indulge into request under the application for condonation of delay and submitted that the present body of the *Grampanchayat* would hardly be responsible for

negligence. He submits that, after disconnection of electricity supply on 27.12.2015, the *Grampanchayat* had collected requisite information and documents in order to enable it to lodge appeal against judgment & decree passed against the *Grampanchayat* in respect of the immovable property. He submits that, no negligence can be attributed to present body of *Grampanchayat*. He further submits that, it is easily discernible that earlier body has been lax and appears to have soft-corner to original plaintiff/decreed holder and as such had not made any movement for resistance during the pendency of litigation and for that matter even after service of notice of execution proceedings in 2013. While there had been change in the constitution of *Grampanchayat* around December-2015, the new body had no knowledge of the proceedings. The litigation came to knowledge of the present body due to disconnection of electricity supply on 27.12.2015. The considerations which have weighed with the Court that there has been negligence on the part of the *Grampanchayat* may not be said to be borne out from the facts. He submits that, it is a public body and public property. By indulging into his request at the highest what would happen is that the matter will have to be contested on merits. It may not be that the rights of the plaintiff would be taken away, whereas as, to vindicate rights of the *Grampanchayat*, it has to have an opportunity to establish same

in the litigation. Certain degree of latitude is expected to the public bodies. It is ultimately in the interest of public at large. He thus submits that, under prevailing legal position decision by the appellate court rejecting application for condonation of delay is unsustainable and deserves to be mended in Second Appeal by allowing the application.

14. Mr. Malte, learned counsel for respondent No. 1, vehemently submits that, it is difficult to consider that a delay of three years and odd days stands explained in the application. According to him, the reasons given in the application are casual and over all approach of the *Grampanchayat* in the litigation has been very cursory and shows utter disregard to the Court and its proceedings. He submits that there are absolutely no *bona fides* in the reasons given in the application. Movement is made only after December-2015. He submits that, disconnection has taken place on 27.12.2015 and the documents are stated to have been received at the end of *Grampanchayat* only in the middle of April-2016. For intervening period no explanation has been given at all. He further submits, approach of the *Grampanchayat* has been negligent all through during the suit as well as even thereafter. He submits that, there is no explanation whatsoever for non-prosecution of the suit

after filing of written statement, after notices had been issued for measurement and after notice had been served on the *Grampanchayat* of execution proceeding and possession warrant had been served on *Gramsevak*. He submits that, in the absence of any material to substantiate that there is sufficient cause for condonation of delay, the application does not deserve consideration and has been properly dismissed by the appellate Court.

15. The learned counsel in support of his aforesaid submissions, purports to rely on a decision in the case of *Esha Bhattacharjee Versus Managing Committee of Raghunathpur Nafar Academy and others* reported in (2013) 12 SCC 649, wherein according to him, despite an order of injunction by the High Court not to disturb petitioner's services having been served on the earlier Managing Committee which had appeared in the Court and had been aware of the proceedings and the order and had especially undertaken before the Court to comply with the the court's order and even when that order was directed to be complied with by the Inspector of Schools, the plea that new managing committee, after taking over charge, being not aware of pending litigation or directions of District Inspector, in the facts of that case could not be relied on and the Supreme Court found that new managing committee had been resorting to dilatory

tactics and there the Supreme Court considered in the circumstances, the High Court erred in considering the plea of lack of knowledge to be *bona fide*.

16. In the present matter, it has to be appreciated that the *Grampanchayat* was being managed by earlier elected body during the pendency of suit and even when the notice of measurement, execution proceedings and for that matter possession warrant had been served and yet beyond filing written statement, the matter had not been prosecuted. Whereas, it is not in dispute that in the last quarter of 2015, newly elected body of *Grampanchayat* had assumed charge and thereafter that body had received hint of proceedings around 27.12.2015. It has been explained by *Grampanchayat* that subsequently necessary information and the documents for filing of the appeal were collected and documents were received in the middle of April-2016 and thereafter the appeal has been preferred. It appears that, it is a case relating to immovable property of a public body and a public property is involved in the same. The public body had been manned by earlier elected persons of *Grampanchayat* who do not appear to have made any movement resisting suit beyond written statement. While the new body had come into power, after getting knowledge of *Grampanchayat* being

affected by the litigation, some movement had been made by the new incumbents. The application does make reference to this position and the tenor of the application also suggests the same. In these circumstances, the *Grampanchayat*, which is affected by decision of trial Court, appears to have given sufficient explanation and the circumstances under which the delay having been occurred. The action taken after the newly elected body had come into power does show, the same is neither imbued by *mala fides* nor for that matter any negligence can be attributed to it.

17. In the circumstances, it appears that the guidelines as are appearing in the decision of Apex Court in the case of *Collector, Land Acquisition, Anantnag and another v. Mst. Katiji and others* reported in *AIR 1987 SC 1353*, which are:

- “1. Ordinarily a litigant does not stand to benefit by lodging an appeal late.
2. Refusing to condone delay can result in a meritorious matter being thrown out at the very threshold and cause of justice being defeated. As against this when delay is condoned the highest that can happen is that a cause would be decided on merits after hearing the parties.
3. "Every day's delay must be explained" does not mean that a pedantic approach should be made. Why not every hour's delay, every second's delay? The doctrine must be applied in a rational common sense pragmatic manner.
4. When substantial justice and technical considerations are pitted against each other, cause of substantial justice deserves to be

preferred for the other side cannot claim to have vested right in injustice being done because of a non-deliberate delay.

5. *There is no presumption that delay is occasioned deliberately, or on account of culpable negligence, or on account of mala fides. A litigant does not stand to benefit by resorting to delay. In fact he runs a serious risk.*
6. *It must be grasped that judiciary is respected not on account of its power to legalize injustice on technical grounds but because it is capable of removing injustice and is expected to do so.”*

may be usefully referred to and followed to have a contest on merits.

18. There appears to be lot of force in the reasons given in application causing delay, which, in the facts and circumstances require that those may be given some latitude to have a healthy contest on merits.

19. Inconvenience caused in the process to the plaintiff/decreed-holder would be compensated. As such, having regard to the reasons given in the application for condonation of delay, the decision rendered by the appellate court overlooking the aspects as aforesaid is required to be set aside as it is expedient to grant the application for condonation of delay subject to payment of costs. In the circumstances, the question as referred to herein above stands answered as aforesaid.

20. The Second Appeal is allowed. The Order dtd. 28.07.2016 passed below Exh. No. 1 in Misc. Civil Application No. 81/2016 passed by District Judge-3, Jalgaon, is set aside.

21. The application for condonation of delay is granted subject to payment of costs of Rs. 25,000/- to the plaintiff/deGREE holder. The costs be deposited in Appellate Court within a period of six weeks from the date of receipt of copy of this order.

22. The observations made in this order have efficacy only to the extent of decision in the present Second Appeal against rejection of application for condonation of delay and shall not influence the decision making in the appeal. The Appeal be expeditiously proceeded with and disposed of preferably within a period of six months from the date of receipt of writ of this order.

23. Interim relief to continue till the appeal is registered. It is open for parties to make appropriate applications.

24. Parties agree to appear before the appellate Court on 16.01.2017.

**[SUNIL P. DESHMUKH]
JUDGE**