

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

932 WRIT PETITION NO. 3158 OF 2015

SHAKUNTALABAI TUKARAM GATTE
VERSUS
VENKAT NARAYAN VALSE AND OTHERS

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Advocate for Petitioner : Mr. N. K. Tungar
Advocate for Respondent Nos. 1 to 3 : Mr. D. P. Munde h/f
Mr. V. D. Salunke

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CORAM : V. K. JADHAV, J.

DATED : 24th FEBRUARY, 2016

PER COURT :-

1. By consent of learned counsel for the parties, heard finally at admission stage.
2. Petitioner is the original plaintiff challenging the order dated 24.01.2014 passed by Additional District and Sessions Judge, Udgir below Exh.1 in Civil Misc. Appeal No. 22 of 2013, thereby condoning the delay caused in filing appeal against the Judgment and decree dated 06.08.2011 passed in Regular Civil Suit No.59 of 2009 (old No. 21 of 1999).
3. Learned counsel for the petitioner submits that though the respondents/defendants appeared in the suit and engaged counsel, they failed to file written statement in the suit. Later on,

respondents/defendants filed their written statement alongwith an application for setting aside the “No W.S.” order. The trial court allowed the said application with cost. However, respondents/defendants failed to pay the said cost. Learned counsel submits that there is inordinate delay of more than one year caused in filing appeal against the decree passed in R.C.S. No. 59 of 2009. Learned counsel submits that it is a suit instituted way back in the year 1999. Learned counsel further submits that respondents/defendants have not explained the delay and even then, learned Additional District Judge has condoned the same.

4. Learned counsel for respondents/defendants submits that during pendency of the suit, in the year 2009, the suit came to be transferred to the newly established court at Deoni and the date was not communicated to respondents/defendants by serving notice, if any. Consequently, the suit was disposed of in absence of respondents/defendants and their counsel. Learned counsel submits that the delay in filing appeal is caused due to lack of knowledge and the same is rightly condoned by learned Additional District Judge.

5. The suit is instituted for decree of possession in respect of immovable property. Learned Additional District Judge has observed that absence of respondents/defendants in the suit may be on account of their negligence, but the subsequent delay in preferring

appeal is caused due to want of knowledge and the agricultural work etc. Learned Additional District Judge has observed that the delay has been explained, however, imposed a heavy cost on respondents/defendants for condonation of delay. I do not find any fault in the impugned order passed by the Additional District Judge. Civil Misc. Appeal is preferred against the judgment and decree passed in R.C.S. No. 59 of 2009. The matter relates to possession of an immovable property. In view of this, no interference is called for in the impugned order. The writ petition is hereby dismissed. No costs.

6. Petitioner may file an application before the Additional District Judge for expeditious hearing of the appeal.

(V. K. JADHAV, J.)

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