

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

CIVIL REVISION APPLICATION NO. 09 OF 2016

Ganpat Gangaram Patil,
Since deceased through L.Rs.

- 1A. Smt. Kesarbai Ganpat Patil,
Age: 75 years, Occu: Household,
- 1B. Vasant Ganpat Patil,
Age: 55 years, Occu.: Service,
- 1C. Nilkantha Ganpat Patil,
Age: 48 years, Occu: Service,

All R/o Gangaram Plot, Bhusawal,
Tal Bhusawal, Dist. Jalgaon.

2. Shri Vithal Rama Patil,
Age: 47 years, Occu: Business,
R/o Balaji Galli, Rajput Gadhi,
Bhusawal, Tal Bhusawal,
Dist. Jalgaon.

...APPLICANTS
(Ori. Plaintiffs)

versus

1. Chandrakant Bhagwat Wani,
Age: 57 years, Occu.: Labour work,
2. Prakash Bhagwat Wani,
Age : 55 years, Occu: Business,
R/o : Gangaram Plot, Bhusawal,
Tal. Bhusawal, Dist. Jalgaon.

...RESPONDENTS
(Ori. Defendants)

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Mr. Shailesh P. Brahme, Advocate for applicants
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CORAM : SUNIL P. DESHMUKH, J.

DATED : 13th JANUARY, 2016.

ORAL ORDER :-

1. This civil revision application purports to take exception to the common order dated 9th October, 2015, on Exhibits-1 and 15 in civil miscellaneous application no. 172 of 2014 passed by District Judge-1,

Bhusawal, whereunder applications of present respondents - original applicants for condonation of 338 days delay and for restoration of regular civil appeal No. 224 of 2007 have been allowed.

2. Factual position giving rise to present civil revision application may be briefly narrated as under:-

. Regular civil suit bearing No. 75 of 1990 had been filed by present applicants - original plaintiffs against present respondents - original defendants for declaration, possession and injunction. Under judgment and decree dated 9th July, 2007, 2nd joint civil judge, junior division, Bhusawal, decreed the suit. Against said judgment and decree, present respondents-original defendants preferred regular civil appeal No. 224 of 2007. Said appeal had been dismissed in default for want of prosecution on 19th August, 2013. Thereafter, application for restoration of regular civil appeal No. 224 of 2007 had been filed, which was rejected by the appellate court under order dated 28th October, 2014, finding that said application had not been accompanied with application for condonation of delay and as such rejected the same.

3. Against order dated 28th October, 2014 passed by the appellate court, present respondents - applicants had been before this court in appeal from order bearing No. 1 of 2015. Under order dated 8th April, 2015 the appeal from order came to be disposed of by this court granting liberty to the present respondents-appellants therein to file application for condonation of delay in civil miscellaneous application No. 172 of 2014. Accordingly, application Exhibit-15 had been moved for condonation of delay caused in said application. Both the

applications were heard and the appellate court under order dated 9th October, 2015 allowed the same by imposing cost of Rs. 10,000/- to be paid by present respondents-herein to the present applicants – herein - original opponents.

4. Learned counsel appearing for applicants submits that while aforesaid proceedings were going on, execution of the decree has taken place and present applicants plaintiffs are put in possession of the suit property. He, thus, submits that the appeal is unlikely to serve any purpose. He submits that delay of 338 days is enormous and it cannot be said to have been properly explained. He submits that execution of decree has resulted in creation of rights in favour of the applicants. The appellate court has failed to appreciate the same and imposition of costs is unlikely to mitigate the inconvenience caused to the applicants. He further submits that despite sufficient opportunity, the respondents-applicants had failed to attend the proceedings and, therefore, he submits that it is not a case wherein discretion could have been exercised by the appellate court in favour present respondents.

5. Perusal of impugned order reveals that the appellate court had taken stock of the situation and also taken into account reasons put forth for condonation of delay and the reasons as to why the matter was not being attended to. The appellate court had also taken into account that the high court had granted liberty to the present respondents to file application for condonation of delay subject to payment of costs, which had already been deposited by them. Parties to the application had relied on various citations as had been referred

to in the impugned order.

6. The appellate court had taken into account that generally matters for delay condonation are to be looked at with liberal approach. The appellate court had exercised discretion having regard to the scenario in favour of the respondents-defendants. It appears that the matter had been lingering from quite sometime due to technicalities, particularly, for not making an application for condonation of delay. The matter relates to immovable property from which the respondents-defendants appear to have been dispossessed. The appellate court has properly exercised the discretion vested in it. At this juncture, the discretion exercised by the appellate court cannot be said to be not in accordance with law and judicial principles and cannot be said to be not guided by good conscience. Impugned order cannot be said to be perverse. In the circumstances, the discretion so exercised by the appellate court does not require to be intercepted under the revisional powers of this court.

7. As such, civil revision application is being not entertained and stands rejected.

Sd/-

(SUNIL P. DESHMUKH, J.)

MTK
