

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

SECOND APPEAL NO. 132 OF 2014
WITH
CIVIL APPLICATION NO. 1688 OF 2014

1. Arjun Sahadu Chambhar
(Kshirsagar), age 66 years,
Occu. Agriculture,
R/o Nim, Taluka Amalner,
District Jalgaon
 2. Shivaji Sahadu Chambhar
(Kshirsagar), age 62 years,
R/o Nim, Taluka Amalner,
District Jalgaon
- ..Appellants

Versus

1. Bhamandabai Himmatrao Tayade,
Age 57 years, Occu. Household,
R/o Bhavsar Galli, Chopada,
Taluka Chopada, District Jalgaon
2. Shri Shantaram Bhivsan Chambhar
(Kshirsagar), age 41 years,
Occu. Agriculture,
R/o Shahpur, Taluka Amalner,
District Jalgaon
3. Shri Pandurang Bhvsn Chambhar
(Kshirsagar), age 37 years,
Occu. Service, R/o Nim,
Taluka Amalner, District Jalgaon
4. Shri Narayan Bhivsan Chambhar
(Kshirsagar), age 35 years,
Occu. Service, r/o Nim,
Taluka Amalner, District Jalgaon
5. Jasubai w/o Nilkanth Nikam,
Age 60 years, occu. Household,
R/o Ragini Talkies, Patel Naka,
Ankaleshwar, Taluka Ankaleshwar,
District Surat (Gujarath State)
6. Dhudakabai w/o Vitthal Sawant,
Age 64 years, Occu. Household,
R/o Room No. 116, Panchwati Society,
Char Rasta, Kim, Taluka Olpal,
District Surat.

7. Lilabai w/o Mahadu Mahale,
Age 38 years, Occu. Household,
R/o Dandekar Nagar, Next to Dudh
Federation, behind field of Arun
Khadke, Jalgaon, District Jalgaon
8. Kalabai w/o Magan Visave,
Age 36 years, Occu. Household,
R/o Dandekar Nagar,
Next to Dudh
Federation, behind field of Arun
Khadke, Jalgaon, District Jalgaon
9. Latabai w/o Lotan Sawant,
Age 32 years, Occu. Household,
R/o Room No. 116, Panchwati society,
Char Rasta, Kim, Taluka Olpal,
District Surat
10. Khandu Yadav Chambhar,
deceased
(suit is abated as per application
belwo Exh. 18/1 & accordingly
deleted)
11. Baburao Yadav Chambhar,
Age 64 years, Occu. Agriculture,
R/o Nim, Taluka Amalner,
District Jalgaon

Mr G.S. Rane, Advocate for appellants

Mr S.S. Chapalgaonkar, Advocate for respondent no. 1

CORAM : SUNIL P. DESHMUKH, J.

DATE : 20th December, 2016

ORAL JUDGMENT

1. After hearing learned counsel for the parties, the substantial question of law which appears to fall for consideration appears to be :

“ whether the approach of the appellate court in the matter of condonation of delay is in tune with the prevailing position of law ?”

2. The courts normally are said to adopt a liberal approach and avoid pedantic one while considering an application seeking condonation of

delay giving way to contest on merits of the case. In the present matter, appellate court appears to have got drifted away by non-germane considerations.

3. In a suit filed for partition by the present respondent no.1 -plaintiff which had been decreed under the judgment and decree dated 14th October 2011, it has emerged that the decree concerned had been signed by the learned Judge on 21st October, 2011. It has further emerged that it had been contended on behalf of the present appellants, also the appellants in regular civil appeal before the first appellate court i.e. District Court, that they had specifically referred to that signature of their advocate had been obtained on 29th November, 2011 on the decree of the decision rendered on 14th October, 2011, contending further that though the same happens to be the point of knowledge of the judgment and decree by trial court against them, this particular fact has neither been disputed nor the same has been contested by the respondent-plaintiff. However, the court on its own appears to have considered that in this respect no material has been placed on record. Generally, a litigant would not stand to benefit from causing delay deliberately and intentionally and in the present matter looking at the subject matter, it does not appear that the appellants would have derived any benefit by causing delay. In the circumstances, in view of that the statement which has gone uncontroverted, the court ought to have considered that the other side does not have any serious objection to the same and was unwilling to contest nor the court has considered the position that the decree concerned in fact had been signed on 29th November, 2011, has not been controverted by producing cogent material.

4. It further emerges that it is thereafter from the point of knowledge stated by applicants/appellants, the application for certified copies of requisite documents in order to lodge appeal against the impugned decree had been filed and after obtaining the same, the appeal had been lodged. In the circumstances, the approach of the appellate court appears to be rather pedantic.

5. It cannot be said that the delay has been an inordinate unexplained delay sufficient to arouse suspicion about the contention. Under the circumstances, there being no contest or reasons for not condoning delay, the averments as appearing in application ought to receive its due and as such, rejection of request for condonation of delay appears to be too harsh on the appellants. There appear to be given sufficient reasons for condonation of delay.

6. In the circumstances, I deem it expedient to allow the appeal, finding that the approach of the appellate court could have been little more liberal while considering the application for condonation of delay.

7. As such, second appeal stands allowed. The order impugned stands set aside. Delay in filing regular civil appeal stands condoned and miscellaneous civil application before District Judge-1, Amalner for condonation of delay bearing no. 28 of 2001 stands allowed.

8. Civil application stands disposed of.

SUNIL P. DESHMUKH,
JUDGE