

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

SECOND APPEAL NO. 51 OF 2014

Dhanraj S/o Ankushrao Chavan
Age 34 years, Occu-Service
R/o Jaynagar. Tq. Shahada,
Dist.Nandurbar.

.. APPELLANT
[ORIG.DEFT.NO.6.]

VERSUS

- 1] Manjulabai W/o Jagannath Bawiskar
age 64 yrs, Occu-Housewife, R/o Deopur
Dhule
- 2] Yashwant S/o Ladu Patil
Age 73 years, Occu.Pensioner
- 3] Sumanbai W/o Yashwant Patil
Age 68 years, Occu-Business
- 4] Dyneshwar S/o Yashwant Patil
Age 43 yrs, Occu.Service.
- 5] Deepak S/o Yashwant Patil (dead)
- 6] Kiran S/o Yashwant Patil
age 48 yrs, Occu-Business
Res.No.2 to 4 and 6, R/o
Tambepura, Tq. Amalner
Dist.Jalgaon.

.. RESPONDENTS
[Resp.No.1 Orig.Plaintiff
Resp.No.2 to 6 Orig.Deft.
No.1 to 6)

...

Shri V.M.Maney, Advocate for appellant
Respondents no.2 to 4 and 6 served.

Shri Shailesh S. Chapalgaonkar, Advocate for respondent no.1
Respondent no.5 dead.

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CORAM : SUNIL P. DESHMUKH,J.

DATED : 29TH JANUARY,2016

PER COURT :-

Heard learned counsel of parties for quite some time.
Mr.Maney very passionately urges to take a sympathetic view in the
matter since the immoveable property of appellant is at stake.

2] Upon hearing the parties, following substantial question of law
emerges for consideration :

[1] Whether the lower appellate Court had
committed any error in rejecting application for
condonation of delay filed by the appellant?

3] It is the case of the appellant defendant no.6 in Regular Civil
Suit No.75/2002 that he had purchased the suit property from
defendants no.1 to 5 under registered sale deed dated 4/4/2002 and
that the purchase had been made after due enquiry and that there

was no record indicating the registered transaction of 1990.

4] It emerges on record that after the execution of sale deed in favour of appellants (orig.defendants) no.1 to 5 that the Suit had been immediately instituted seeking declaration and injunction against the defendants.

5] The suit was tried and has been decreed in toto granting all the reliefs claimed by plaintiff. The suit was decreed on 19/04/2011. Proceedings were initiated at the instance of present appellant bearing Miscellaneous Application No.28/2012 seeking condonation of delay for filing appeal against decree referred to hereinabove. In the said appeal, it has been submitted that the property has been purchased by the present appellant under registered sale deed taking into account entries of 7/12 extract and from the persons who were then being shown as owners of the property and had been accordingly put in possession. However, soon after the purchase, the appellant had received suit summons and he had been to the vendors. It is the submission that the vendors had assured that they would look after the litigation and that the suit is false and the appellant had been taken by vendors to the lawyer and had taken his signature on the Vakalatnama, further telling the appellant that it would not be necessary for him to attend to the Court proceedings

and litigation would be looked after by vendors and the lawyers. Content with the same, appellant had been at rest. Thereafter, the appellant had not been informed about anything in respect of said litigation. When he was called suddenly at the police station on 14/11/2012 he came to know about the decision in the litigation and thereafter, the appellant engaged lawyer and obtained certified copy and had filed the present application. The original plaintiff appeared in said Miscellaneous proceeding and opposed the condonation of delay. Rest of the respondents who were defendants in the suit, however, although being served have chosen to remain ex parte. The plaintiff respondent had opposed the application. Before appellate Court, the appellant had placed on record sale deed of the suit property and judgment and decree in the suit and the appellant had not adduced any oral evidence and passed pursis accordingly. Learned appellate Judge by his order dated 25/10/2013 rejected Miscellaneous Application for condonation of delay of about 1½ year.

6] Learned counsel Mr. Maney as stated hereinabove passionately and vehemently submits particularly referring to the contents of paragraph no.5 in the impugned order that the appellate Court had been absolutely under misconception that appellant was not diligent after purchase. The appellate Court had considered that the appellant had been to the plaintiff as against the case of the

appellant that he had been to the defendant vendors and that is apparent from contents of paragraph no.5. Having looked at tenor of the contents of paragraph no.5 it appears that while recording the reasons, appellate Court has jumbled the status of the parties missing out that as a matter of fact the appellant's case is that he had been to the defendants-vendors and not to the plaintiffs. Reference to plaintiff in paragraph no.5 is merely a slip under inadvertence, however, the appellant all along had intended to refer that the appellant had been to defendants. Apart from such slip, appearing in the order, the reasons given can hardly be faulted.

7] In the first place, while the suit came to be instituted specifically referring to the registered document in respect of suit property in favour of the plaintiff. A further reliance on the very same persons who having entered into transaction of the sale of the very same property to appellant-defendant no.6 appears to be very strange. However, it is contended that the vendors had given him assurance that they would look after the litigation and had taken him to lawyer where he had signed the Vakalatnama. Thereafter, there is no evidence led in respect of these contentions. Except the statements appearing in the application no oral evidence had been given in this respect. Further the matter apparently has not been prosecuted with diligence as was required in the circumstances. For

about ten years after signing the Vakalatnama, there is nothing placed on record to indicate that the appellant had been keeping track of the progress in the proceeding. After ten years, the appellant had not cared about the proceedings nor anything is placed on record to indicate any concern with litigation. Although it has been contended that reliance has been placed on the vendors, the record shows that an independent lawyer had been engaged by the appellant. It is not the case of the appellant that he had ever made any enquiry with the said lawyer or had been in touch with him. In the absence of any evidence in this respect, the reasons as have been given under the impugned order for refusal to condone delay do not appear to be improper or irrational. The reasons being given for condonation of delay in the absence of any evidence can hardly satisfy the requirement of "sufficient cause" as is referred in Section 5 of the Limitation Act. In these circumstances, it is not a case wherein it can be said that the Second Appeal deserves any further consideration.

8] Mr.Maney, learned counsel for appellant during the course of submissions, relied on order passed by Hon'ble Single Judge of this Court in Second Appeal No.651/2007 dated 18/06/2013. In said case, it appears that the appellant had requested to remand the case for the appellant to have an appropriate opportunity to defend in the

trial Court. It was not the case relating to condonation of delay at all. It further appears that the request of the appellant in the Second Appeal had been absolutely ignored while deciding the Regular Civil Appeal. It is in these circumstances the matter had been remanded. There can be no analogy adopted in the present matter with reference to the said decision.

9] Second Appeal does not carry any substance and is dismissed as such.

(SUNIL P. DESHMUKH,J.)

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