

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR

CIVIL APPLICATION NO.965 OF 2015

IN

SECOND APPEAL ST. NO. 22763 OF 2015

[Uttam Ramchandra Dhole .vs. Mohan Rajaram Dhole]

 Office Notes, Office Memoranda of Coram,
 appearances, Court's orders of directions
 and Registrar's orders

Court's or Judge's orders

 Mr. S.S. Dhengale, Advocate for the applicant-appellant,
 Mr. V.B. Gawali, Advocate for the respondent.

CORAM : PRASANNA B. VARALE, J.

DATED : JANUARY 12, 2016.

Heard.

By the present application, the applicant-appellant seeks condonation of delay in filing the Second Appeal challenging the judgment and order passed by the learned Ad-hoc District Judge-1, Washim, dated 24.11.2014, in Regular Civil Appeal No.60/2010.

Mr. Dhengale, the learned counsel for the applicant-appellant, fairly submits that though it is stated in the application that the delay is of 252 days, but actually the delay is of 274 days. Learned counsel vehemently submitted that the said delay is caused due to the communication gap between the party and the learned counsel appearing on behalf of the parties in the court's below as well as the ill-health of the applicant. It is the submission of the learned counsel for the applicant that these reasons for the delay are bona-fide reasons and are purely unintentional at the act of the applicant. Learned counsel submits that the necessary documents, such as certificates issued by the Hospital are also placed on record. Learned counsel submits that it is observed in the judgment that none appeared

for the respondent, thus the applicant was not represented through his counsel and for the failure of the counsel to appear in the court to prosecute the matter, the party should not suffer. Learned counsel submits that as the property is a residential house and as the appellant has raised substantial grounds in his appeal in stead of adopting any hyper technical approach, the court may adopt a liberal approach so as to protect the interest of the party, as the applicant-appellant is approaching this court by the present Second Appeal on substantial grounds of law.

Mr. Gawali, the learned counsel appearing for the respondent, vehemently opposes the application. Learned counsel for the respondent submits that the applicant-appellant has not approached this court with clean hands and the applicant though was initially being represented through counsel, the learned counsel submitted pursis to the court that as he was not having instructions, he was unable to prosecute the matter. Learned counsel for the respondent submits that for his own fault, the applicant cannot put a blame on the counsel. Learned counsel also invited my attention to the documents placed on the record along with the reply to submit that the applicant-appellant made some wrong statement before the Executing Court. Thus, the learned counsel prays for dismissal of the application.

There cannot be any dispute on the submission of the learned counsel appearing on behalf of the applicant-appellant that where the valuable rights of the parties are involved, the courts may not adopt a hyper technical approach and the courts may consider the matter on its own merit and the matter of delay if there are good and justifiable reason. This court will have to satisfy itself that the applicant-appellant has raised such good ground. It is also not in dispute that in the settled position of law reflected in the judgment of this court as well as the judgment of the Apex Court, if there are good and justifiable reason, even the

long length of delay can be condoned and if the reasons are not so convincing and justifiable, even short length delay cannot be condoned. On the backdrop of the settled principles, if the present application is considered, it clearly reveals that the applicant-appellant has not placed all the relevant facts on record. Though, at the first blush, the reason is placed on record is about the mistake of the counsel namely, non appearance of the counsel for the party and such non appearance of the counsel representing party looks attractive, but on perusal of the material, it shows that the applicant has raised this ground only to put a blame on the counsel. It is stated in the application that the applicant had engaged a counsel to contest the appeal, but the counsel did not appear on behalf of the appellant and the observation is also made in the impugned judgment to that effect. The copy of pursis dated 13.8.2014 is submitted by the learned counsel for the respondent in the present matter clearly shows that the pursis was submitted in the year 2014 to the effect that the applicant-appellant took away all the necessary papers from the counsel and submitted 'no instructions' to the counsel for a period of two years and as such the counsel was left with no choice but to file pursis on record seeking his discharge.

On the backdrop of such material, the first ground raised by the applicant-appellant is wholly untenable. It clearly reveals that the applicant-appellant is playing a blame game and wants to put the whole burden on the counsel and also makes a bold statement before this court that the party should not suffer for the mistake of his counsel when the fact is otherwise. The party, who failed to provide instructions to the counsel and the counsel filing necessary pursis in the court much prior to the impugned judgment, cannot throw the burden of his mistake on the shoulders of the counsel.

The another ground raised in the application is about

ill-health of the applicant-appellant. The applicant has placed on record certain certificates issued by the Hospitals. The last certificate is issued by one Hospital, namely 'Mehkar Multispeciality Hospital'. It is stated in the certificate that the applicant was advised rest for his ailment from 10.7.2015 to 15.8.2015 and he was found fit to join work w.e.f. 16.8.2015. This is a certificate issued on 17.11.2015.

The application of seeking condonation of delay along with appeal is filed in the month of November, 2015. There is absolutely no reason stated in the application that if the applicant was fit to join duties from August, 2015 meaning thereby he was able to take necessary steps, what prevented the applicant-appellant to approach this court after August, 2015 and what prompted the applicant-appellant to approach this court only along with the certificate issued by the hospital of November, 2015 certifying that the applicant-appellant was under treatment from 10.7.2015 to 15.8.2015. This court normally would have stopped here only as both the grounds raised by the applicant-appellant are, least to say, neither convincing nor good reasons for condoning the delay, but for the material placed on record, this court finds that the applicant-appellant took the court for granted. The applicant-appellant submitted an application in the Executing Court seeking cancellation of the warrant. His application is submitted on 8.9.2015. The copy of the said application, which is placed on record along with the reply of the respondent, shows that the said application was submitted on 8.9.2015. In the said application, a statement was made that the applicant i.e. the applicant-appellant herein has filed an appeal in the High Court. This application is of 8.9.2015 while the appeal in this court is filed on 23.11.2015. The bailiff report placed on record also shows that when the process server approached the property, the

applicant-appellant and his family members obstructed him. Not only this, the panchanama drawn on 3.11.2015 shows that the process server was objected by the family members of the applicant-appellant and his family members submitting that they are possessing a stay order but they would not show it. Thus, it clearly shows that the applicant-appellant indulging in such an activity of causing obstruction to the process server (court officer) and also at the same time approaching the court with a wrong statement. Thus, though this court is well aware that in the matters where the rights of the parties are involved, the court should not adopt a hyper technical approach and the parties be permitted to contest their cause on merit instead of depriving the parties to approach the court at the threshold, the facts referred to above, clearly show that the applicant is not worthy of such a liberal approach by this court. Considering all these aspects, in my opinion, the application does not deserve consideration in view of the aforesaid facts and there is no reason to condone the delay caused in filing the second appeal.

Hence, for the reasons stated above, the application is rejected.

JUDGE