

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CIVIL APPLICATION NO. 10846 OF 2016
IN
SECOND APPEAL (STAMP) NO. 16584 OF 2016
(Pralhad Rajaram Patil Vs. Branch Manager, Union Bank of
India, Jalgaon)

Smt. V.S. Sangle, Advocate holding for Mr. S.G.
Bobde, Advocate for the applicant
Mr. Y.B. Bolkar, Advocate for respondent Nos.1 and 3

CORAM : SANGITRAO S. PATIL, J.

DATE : 2nd AUGUST, 2017

ORAL ORDER :

Heard the learned counsel for the parties.

2. The learned counsel for the applicant submits that there has been delay of 215 days in filing the appeal because the applicant is an aged person. He was not aware of the provisions of law of limitation and due to illness, he could not file appeal within the prescribed period of limitation. He submits that the delay is not deliberate or intentional. The applicant has a good case. Therefore, for doing substantial justice, the delay may be condoned. In support of this contention, she relied on the judgments in the cases of

**Maniben Devraj Shah Vs. Municipal Corporation of Brihan
Mumbai AIR 2012 SC 1629 and Collector, land Acquisition,
Anantnag Vs. Mst. Katiji AIR 1987 SC 1353.**

3. The learned counsel for the respondent submits that the applicant was a party-in-person before the Trial Court as well as the First Appellate Court. He was very much aware of all the legal provisions pertaining to institution of the suits and appeals. He was aware of the judgment of the First Appellate Court on the day on which it was pronounced. He applied for the certified copy thereof on the next day of the date of pronouncement of the judgment by the First Appellate Court. There is absolutely no justifiable reason for condonation of delay in filing the appeal.

4. It is well settled that the establishment of sufficient cause is a precondition for inviting the discretion of the Court in the matter of condonation of delay. It is true that while considering the question of condonation of delay, a liberal approach and pragmatic view has to be taken for doing substantial justice, as has been held in the case of **Collector, Land Acquisition, Anantnag** (supra). However, when there is no sufficient cause for the delay as contemplated under

Section 5 of the Limitation Act, the discretion vested in the Court in the matter of condonation of delay cannot be exercised to the detriment of the party in whose favour certain rights have been created because of the lapse on the part of the applicant.

5. In the present case, the applicant filed Regular Civil Suit No. 148 of 2013 at his own. He himself prosecuted the said suit without taking help of any legal practitioner. Thereafter, being aggrieved by the judgment and order dated 10th September, 2014 passed by the Trial Court, the applicant filed Regular Civil Appeal No. 181 of 2014 in the District Court. The appeal memo seems to have been drafted by the applicant himself. It is, thus, clear that he was well versed with the provisions of law and particularly, the law of limitation. He applied for certified copy of the judgment and decree passed by the First Appellate Court on the next day of the date of pronouncement of the judgment and received the same on 6th July, 2015. Thereafter, he did nothing in the matter of filing the Second Appeal. Considering the fact that the applicant instituted the suit as well as the first appeal himself and prosecuted the same as a party in person, without

taking any legal assistance, it cannot be said that he was not aware of the provisions of law. Even otherwise, the ignorance of law is no excuse. About illness, there is absolutely nothing on record to show that because of ill-health, the applicant was not in a position to move and approach the Court for filing the Second Appeal.

6. There is concurrent finding of facts recorded by the Trial Court as well as the First Appellate Court. Since the applicant failed to establish sufficient cause for the delay in filing the appeal, the application is liable to be dismissed and accordingly dismissed. No costs.

[SANGITRAO S. PATIL]
JUDGE

npj/ca10846-2016