

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CIVIL APPLICATION NO. 10439 OF 2015
IN
REVIEW APPLICATION (ST.) NO. 17978 OF 2015
IN
SECOND APPEAL NO. 336 OF 2002

Shiwaji S/o Rangnath Gaikwad,
Age 38 years, Occu.: Agri.,
R/o Shivrai, Tq. Vaijapur,
Dist. Aurangabad

.. APPLICANT

VS.

1. Rangnath S/o Mainaji Gaikwad,
Age 48 years, Occu.: Agri.,
R/o Shivarai, Tq. Vaijapur,
Dist. Aurangabad
2. Vishnu S/o Rangnath Gaikwad,
Age 39 years, Occu.: Agri.,
R/o As above .. (Original Def. No.1 & 3
and Appellants in S.A.)
3. Chhaya W/o Eknath Gaikwad,
Age 48 years, Occu.: Agri.,
R/o As above
4. Eknath S/o Rangnath Gaikwad,
Age 53 years, Occu.: Agri.,
R/o As above
5. Machindra S/o Rangnath Gaikwad,
Age 37 years, Occu.: Agri.,
R/o As above
6. Prakash S/o Rangnath Gaikwad,
Age 72 years, Occu.: Agri.,
R/o As above
7. Vinubai Rangnath Gaikwad,
Age 75 years, Occu.: Agri.,
R/o As above

.. RESPONDENTS
(Orig. Defendants)

Mr. B.V. Dhage, Advocate for the applicant

Mr. S.P. Telgote, Advocate for respondents no.2, 6 and 7

Mr. Sk. Soyab, Advocate h/f Mr. V.R. Dhorde, Advocate for respondents no. 3 and 4

CORAM : SUNIL P. DESHMUKH, J.

DATE : 10/02/2017

ORAL JUDGMENT :

1. Heard learned counsel for the parties.
2. Applicant is original plaintiff in regular civil suit no.161 of 1993 instituted by him seeking partition of landed properties, namely, gut no.193, gut no.211, gut no.210/2 and gut no.209 situated at village Shivari, Tq. Vaijapur, District – Aurangabad. The suit was decreed under the judgment and decree dated 22/4/1995, granting 1/7th share to plaintiff in all the properties referred to above. Said judgment and decree was subject matter of challenge in regular civil appeal no.310 of 1995 at the instance of the original defendant no.7. Said appeal came to be partly allowed, in the sense the decree had been maintained in respect of partition gut no.193, 211 and 209, excluding gut no.210/2, which was considered to be exclusive property of defendant no.7.
3. Original defendants 1 and 3, purported to have been aggrieved by the appellate decree were before this court in second appeal no. 336 of 2002. After hearing learned counsel for the

present applicant / plaintiff and appearing parties, the second appeal had been dismissed by this court under judgment and order dated 5/6/2007 and, as such, the decree passed by the appellate court had been confirmed.

4. Present application has been moved by applicant / plaintiff on 26/6/2015 seeking condonation of delay of 2911 days, which corresponds to almost 8 years.

5. Learned counsel for the applicant Mr. Dhage tries to persuade this court to indulge into request being made for condonation of delay since the applicant is an illiterate person engaged in manual work and is financially poor. In the circumstances, the delay has occurred. Had the applicant been advised properly, his claim to gut no.210/2 would have been agitated before appropriate forum. He submits that the applicant was advised that there is no further remedy provided against the decision by the High Court. He therefore purports to explain the delay accordingly.

6. Learned counsel for the respondents submit that there is no substance in the reasoning given for the condonation of delay. It is difficult to believe that for over a period of 8 years, the man laboured under the impression that there has been no remedy available to him to file further proceedings. It is submitted that had the applicant been aggrieved by first appellate decree, an appeal

could have been easily preferred by him, however, no appeal had been preferred nor it is a case wherein cross-objection had been filed by the applicant/plaintiff during the pendency of the second appeal appeal before this court.

7. Order passed by this court shows that, it does not appear that the applicant/ plaintiff had been aggrieved by the decree passed by the first appellate court nor any point had been canvassed or agitated with regard to gut No.210/2 during the hearing of the appeal before this court.

8. It has further been contested that there is any veracity or substance in the contention that applicant had been advised that no further remedy lies against the decision of this court. Review would not be the remedy, if the challenge is to be posed on merits of the case, where the decree does not suffer from any error apparent. As such, according to learned counsel for the respondents, the very reason which has been raised for condonation of delay, gets deflated.

9. It appears that the applicant/plaintiff purports to move this court in review of decision rendered in second appeal no. 336 of 2002 on 5/6/2007. It does not appear that the applicant had preferred second appeal against the judgment and decree passed by the district court nor the order depicts that any such contention had ever been raised in respect of gut no. 210/2 by the applicant during

the course of hearing. No material has been placed along with the application for condonation of delay indicating that any effort had ever been made for redressal of his grievance against confirmation of the decree of appellate court by decision in second appeal. In the absence of any material supporting reason for condonation of delay being placed, it is difficult to accede to the request made under the application for condonation of delay.

10. In the circumstances, it does not appear to be a case, wherein indulgence can be given to the request being made in the application for condonation of delay.

11. The application, as such, stands dismissed. No order as to costs.

[SUNIL P. DESHMUKH]
JUDGE

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