

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

SECOND APPEAL NO. 10 OF 2017
WITH
CIVIL APPLICATION NO. 169 OF 2017

Puntamba Sahakari Dudh Vyavasaik
Sanstha Maryadit, Puntamba, having
its registered office at Puntamba, Tq.
Rahata, District : Ahmednagar,
through its Secretary

Appellant/orig.
Defendant no.4

**[substituted with leave of the court
granted on 24-08-2017, as under]:-**

Bhaskarrao Jadhav Sahakari
Dudh Utpadak Sanstha Ltd,
Puntamba Tq. Rahata,
Ahmednagar,
through it's Liquidator

versus

1. Shri Dinkarrao Ramrao Borde,
Age : 70 years, occup. Agril. &
Legal Practioner, R/o Kopergaon,
Tq. Kopargaon, Dist. Ahmednagar
2. The Collector, Ahmednagar,
Dist. : Ahmednagar
3. Group Grampanchayat
Puntamba-Rastapur,
Puntamba, Tq. Rahata,
Dist. Ahmednagar,
4. Shri Anil Bhaskarrao Lunpatki,
Age : 50 years, occup. Agril.,
R/o Puntamba, Tq. Rahata,
District : Ahmednagar
5. Shri Prasad Ravindra Lunpatki,
Age : 51 years, occup. : Agril.
R/o Puntamba, Tq. Rahata,
District : Ahmednagar

6. Shri Chandrakant Bhimashankar, .. Respondents/
Dhanvate, age 76 years, occup. Agril. R. No.1 orig.
R/o Puntamba, Tq. Rahata, Plaintiff, &
District : Ahmednagar 2 to 6 orig.
Defts.

Mr. V. H. Dighe, Advocate holding for Mr. Pravin S. Dighe,
Advocate for appellant

Mr. P. B. Shirsath, Advocate for respondent no. 1

Mr. K. G. Patil, Advocate for respondents no. 3 to 5

Mr. M. B. Bharaswadkar, Assistant Government Pleader for
respondents no. 2

CORAM : SUNIL P. DESHMUKH, J.
DATE : 24th August, 2017

ORAL JUDGMENT :

1. Leave to amend.
2. This is second appeal through liquidator of the society as substituted pursuant to the amendment.
3. The appellant - original defendant no. 4 challenges order dated 28-03-2016 passed by District Judge-1, Kopergaon whereunder appellant's civil delay condonation application no. 33 of 2015, in appeal being preferred taking exception to the judgment and decree by civil judge, senior division, Kopergaon dated 19-06-2015 in regular civil suit no. 322 of 2010, has been rejected.

4. The question that emerges for consideration after hearing learned counsel for the parties, substantially appears to be;

" As to whether the approach of the appellate court in the matter of condonation of delay of 39 days in preferring appeal against judgment and decree of the trial court dated 19-06-2015 in regular civil suit no. 322 of 2010 referred to above can be said to be consistent with prevailing legal position as may emerge from two decisions of the supreme court in the cases of Collector, Land Acquisition, Anantnag vs. Mst. Katiji, reported in 1987 AIR SC 1353, and Esha Bhattacharjee vs. Managing Committee of Raghunatpur Nafar Academy & ors, reported in (2013) 12 SCC 649 ? "

5. The appellant - defendant no. 4 in regular civil suit no. 322 of 2010 is a society. Before it went into liquidation, the appellant had engaged advocate to prosecute the suit before the trial court on its' behalf. However, there had been some communication gap and the progress of the matter had not been apprised of as expected from the advocate and in the process, suit before the trial court proceeded and the decree came to be passed on 19-06-2015.

6. The developments in the suit surfaced during discussion in August, 2015. It came to light that decree has been passed on 19-06-2015. It was thereafter, requisite preparations for preferring appeal had been made and accordingly appeal came to be filed which in the process had been delayed by 39 days.

7. While in civil delay condonation application, cause of delay had been explained as referred to above, respondent no.1 herein (original plaintiff - respondent no. 1 before the first appellate court) resisted the application, contending that the society is no longer functioning and in fact, had stopped functioning about twenty two years back. The office of the society has been in chaotic state. Delay has been caused due to negligence. The appeal is being preferred only with a view to procrastinate enjoyment of fruits of decree by plaintiff - decree holder.

8. Perusal of the impugned order shows that the appellate court has considered, the appellant had attended to the matter casually and the suit had not been attended to properly by appellant and entire things had been left to the advocate.

9. It has been observed that not only the applicant-appellant has not got information from his advocate about the date of judgment and even after the judgment he has not tried to take information about the judgment and decree and as such the applicant is negligent in attending to the matter. In the circumstances, the advocate of the applicant-appellant alone cannot be blamed about not furnishing information to the appellant.

10. Appellate court has referred to a decision of the high court in *Yuvraj Vithu Sutar vs. Dinkar Lahu Sutar*, reported in 2012 (2) Mh. L. J. 174 and has quoted an extract from the same reading thus:

" In the matters of condonation of delay, a highly pedantic approach should be eschewed and an approach which furthers the cause of substantial justice should be adopted. Party should be allowed to prosecute its remedy on merits rather than being thrown out on technicalities. "

11. The appellate court purported to refer to that the appellant - applicant has not shown sufficient cause for condonation of delay and that the application is silent on merits and further, it appears that the applicant-appellant had not led any evidence in regular civil suit and thus had avoided to file appeal within time.

12. Learned counsel Mr. Dighe appearing on behalf of appellant-defendant no. 4 submits that, considerations which apparently have weighed with appellate court while deciding application seeking condonation of delay are wide apart from the considerations which ought to be taken into account. He submits, though court has referred to the observations in the matter of *Yuvraj's* case (supra) that in the matters of condonation of delay a highly pedantic approach should be eschewed and a party should be allowed to prosecute the remedy on merits rather than being thrown on mere technicalities yet, court appears to have fallen apart from the spirit of the observations. He submits that negligence is attributed to appellant in the absence of any retributory evidence coming from the other side. He submits that, may be there is some laxity in prosecution of the matter liable to be attributed to the appellant yet, looking at the resistance by other side on the count that the society had been in doldrums, an allowance needs to be given to the same and the society cannot, in the circumstances, be attributed absolute negligence as is sought to be considered by appellate court. He, therefore, submits that while delay cannot be attributed any deliberation or intention, a liberal approach

ought to have been adopted in the matter particularly when the delay is not absolutely enormous.

13. Opposing aforesaid submissions, Mr. Shirsath, learned counsel appearing on behalf of respondent no. 1-original plaintiff submits that appellate court has gauged veracity of reasons given for delay. He submits that appellant has shown absolute disregard to the court proceedings and contends that the reason for delay is non information from the lawyer. He submits that the intention underlying present proceedings is only to delay and deprive fruits of litigation to the plaintiff-decree holder. The application has been moved to see that execution of decree is prolonged. While the society had been not functioning from a longtime, its' activity now is only to litigate in the present proceedings and nothing further. He submits, these proceedings have been moved with a view to vex and cause harassment to decree holder. He, therefore, submits not to indulge into request being made by appellant although delay ostensibly appears to be of 39 days. He further purports to submit that even otherwise, the appellant has no case on merits as has been observed by the appellate court and as such, has been shy of disclosing any merits in the application.

14. Be that as it may, it emerges from aforesaid, particularly from paragraphs no. 13 and 15 of the impugned order, that court was swayed by laxity in conduct of the suit by the appellant rather than the reasons underlying the application seeking condonation of delay. What would be germane while considering such application are the reasons for the same and the past conduct of the party seeking condonation of delay may not be of much importance particularly in the facts and circumstances of the present case where it appears, society is stated by respondents to have been not functioning.

15. In the circumstances, while a liberal approach is considered to be appropriate in dealing with the application for condonation of delay as would emerge from the guidelines in the two cases referred to above, it appears to be expedient in the present facts and circumstances to give latitude to reasons for delay. As such, delay deserves to be condoned.

16. As such, approach of the appellate court while considering the application seeking condonation of delay is not exactly as would be desired in the matters of condonation of delay to condone delay. In the circumstances, the substantial question stands answered as aforesaid.

17. The appeal is allowed. Impugned judgment and order dated 28-03-2016 passed by District Judge-1, Kopergaon rejecting civil delay condonation application no. 33 of 2015 stands set aside. Said application Exhibit – 33 stands allowed.

18. At this stage, learned counsel for respondent no. 1 Mr. Shirsath submits that since delay condonation application is allowed, appellate court may be directed to proceed with the appeal on merits as expeditiously as possible and decide the same at an early date.

19. Request appears to be legitimate and reasonable and as such, the appellate court to proceed with appeal expeditiously and decide it preferably within a period of four months from date of receipt of writ of this order. It is incumbent that the appellant shall complete all formalities for hearing of the appeal during this period.

20. Civil application stands disposed of

SUNIL P. DESHMUKH,
JUDGE

pnd