

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

SECOND APPEAL NO. 4 OF 2016
WITH
CIVIL APPLICATION NO. 11157 OF 2016

NIRMALABAI BHALERAO PATIL
VERSUS
SONALIDEVI @ SONALIBAI SANJAY PATIL

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Advocate for Appellant : Shri Rane Girish S.

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CORAM : RAVINDRA V. GHUGE, J.
Dated: September 22, 2017

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PER COURT :-

1. Despite service of court notice through paper publication, the sole respondent has not entered an appearance. A last chance was granted on 3.8.2016. For the last one year, none appeared for the respondent. On 25.8.2016, this Court once again issued a notice, which is again served by the paper publication, yet no appearance has been caused. Hence, I have heard the learned Advocate for the appellant.

2. By the impugned order dated 1.10.2015, the appellate Court has refused to condone the delay of 25 months, caused in filing the Appeal for challenging the judgment and decree dated 6.12.2010 (wrongly typed as 12.10.2010) in Special Civil Suit No.5 of 2010.

3. I have considered the reasons cited by the petitioner in the application for condonation of delay and I have also gone through the medical papers from page Nos.6 to 31 annexed to the Civil Application filed by the appellant. As the appellant was undergoing treatment for Tuberculosis, the delay of 25 months is said to have occurred.

4. It is trite law that while considering an application for condonation of delay, in the light of Section 5 of the Limitation Act, 1963, the delay can be condoned if the reasons assigned are satisfactory and if laches and oblique motive are not attributed to the conduct of the applicant. Similarly, an inordinate delay would not be condoned lightly unless strong reasons are assigned. It also needs to be assessed, as to whether the applicant would be rendered remediless if the delay is not condoned, in the absence of laches.

5. The Honourable Apex Court in the case of Collector, Land Acquisition Anantnag and another Vs. Mst. Katiji and others [(1987) 2 SCC 107], has observed while dealing with the application for condonation of delay, as under :-

" 1. Ordinarily a litigant does not stand to benefit by lodging an appeal late.

2. Refusing to condone delay can result in a meritorious matter being thrown out at the very threshold and cause of justice being defeated. As against this when delay is condoned the highest that can happen is that a cause would be decided on merits after hearing the parties.

3. "Every day's delay must be explained" does not mean that a pedantic approach should be made. Why not every hour's delay, every second's delay? The doctrine must be applied in a rational common sense pragmatic manner.

4. When substantial justice and technical considerations are pitted against each other, cause of substantial justice deserves to be preferred for the other side cannot claim to have vested right in injustice being done because of a non-deliberate delay.

5. There is no presumption that delay is occasioned deliberately, or on account of culpable negligence, or on account of mala fides. A litigant does not stand to benefit by resorting to delay. In fact he runs a serious risk.

6. It must be grasped that judiciary is respected not on account of its power to legalize injustice on technical grounds but because it is capable of removing injustice and is expected to do so."

6. The Honourable Apex Court has culled out certain principles and factors to be taken into account while condoning the delay in the matter of Esha Bhattacharjee Vs. Managing Committee of Raghunathpur Nafar Academy and others [(2013) 12 SCC 649].

7. The appellant is a mother and an illiterate villager. Having suffered from an illness, the delay of 25 months has been caused. If the order of rejection of the application is sustained, the appellant would be rendered remediless. No litigating side in the absence of oblique motives, could take advantage of any delay and would not benefit from causing a delay in the matter.

8. The Honourable Apex Court has time and again held that in such matters, a pragmatic view has to be adopted rather than adopting a pedantic view.

9. In the light of the this Appeal is allowed. The impugned order dated 1.10.2015 is quashed and set aside and Civil Misc. Application No.7 of 2013 is allowed. The appellate Court shall register the Second Appeal and shall issue notices to the litigating sides in the matter.

10. The Civil Application stands disposed off.

11. Since the proceedings are initiated for recovery of Rs.1,31,500/- from the defendant, I am imposing costs for the delay caused, for an amount of Rs.2,500/-, which the appellant / plaintiff shall deposit with the appellate Court. As the respondent has not appeared in the matter, the said amount shall be transmitted to the funds of the District Legal Aid Committee.

(RAVINDRA V. GHUGE, J.)

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