

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

SECOND APPEAL NO. 703 OF 2016

Smt. Chandrabhaga Vana Patil,
Age : 75 years, Occu.: Nil,
R/o. Vani,
Taluka and District Dhule

.. Appellant
(Orig. Defendant)

Vs.

1] Smt. Gangubai Bhimji Patil,
Age : 50 years, Occu.: Household

2] Shri. Satish Bhimji Patil,
Age : 33 years, Occu.: Driver

3] Shri. Ravindra Bhimji Patil,
Age : 28 years, Occu.: Education

4] Manisha Bhimji Patil,
Age : Adult, Occu.: Household
All R/o Vani Bk.,
Taluka & District Dhule

.. Respondents
(Orig. Plaintiffs)

Mr. Amit S. Savale, Advocate for the appellant
None present for the respondents though served

CORAM : SUNIL P. DESHMUKH, J.
DATE : 23/01/2017

ORAL JUDGMENT :

1. This Second Appeal has been moved against rejection of miscellaneous civil application no. 33 of 2016 by district judge-4, Dhule, whereunder request of present appellant to condone

delay of 30 days in filing regular civil appeal against judgment and decree passed by 2nd joint civil judge, junior division, Dhule dated 21/1/2016 decreeing the suit for possession and injunction of the plaintiffs / present respondents and simultaneously dismissing counter claim of the present appellant / defendant.

2. Heard learned counsel appearing Mr. Savale appearing for the original defendant - present appellant. He points out that there is delay of 30 days which has been caused due to original defendant - present appellant being indisposed and old aged. He submits that while the decision of the Supreme Court in the case of ***Collector, Land Acquisition, Anantnag Vs. Ms. Katiji and ors.*** reported in ***A.I.R. 1987 S.C. 1353*** had been referred to and relied on, it does not appear that the learned judge has taken into account the guidelines, as are appearing in paragraph no.3 of the said case, reading thus :

“3 The legislature has conferred the power to condone delay by enacting S. 5 of the Indian Limitation Act of 1963 in order to enable the Courts to do substantial justice to parties by disposing of matters on ‘merits’. The expression “sufficient cause” employed by the legislature is adequately elastic to enable the Courts to apply the law in a meaningful manner which

subverses the ends of justice that being the life purpose for the existence of the institution of Courts. It is common knowledge that this Court has been making a justifiably liberal approach in matters instituted in this Court. But the message does not appear to have percolated down to all the other Courts in the hierarchy. And such a liberal approach is adopted on principle as it is realized that:-

(1) Ordinarily a litigant does not stand to benefit by lodging an appeal late;

(2) Refusing to condone delay can result in 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 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 hours delay, every seconds 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 was no presumption that delay is occasioned deliberately, or on account 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.”

3. Perusal of the impugned order reveals that since the appellant had not produced any document in support of the reason of defendant being ill and being of old age and further that since every day's delay has not been explained, it may not be a case wherein it can be stated that the delay has been properly explained.

4. The question, therefore, that will have to be addressed to in the present second appeal, appears to be, “whether learned appellate judge had approached the miscellaneous civil

application, as would be required in the matter of delay condonation ?“

5. According to prevailing position in law looking at the guidelines, as have been referred to by learned counsel for the appellant, it is discernible that a little liberal approach and consideration needs to be given. Appellant can seldom derive any benefit in causing delay which is stated to be not deliberate and intentional and which is not countered by opposition in the present appeal.

6. It appears that, the stricter approach, as is adopted under the impugned order is not congruous to the position of law, which requires little softer and liberal approach. In the circumstances, it appears that besides oral opposition at the lower appellate stage, there has been no opposition by producing any material worth credence, by which it can be said that there is no veracity in the claim of the appellant being made by him being indisposed. Besides, the period of delay does not appear to be inordinate.

7. In the circumstances, the reason put forth deserves to be given its due weightage and appears to cause sufficient reason, worthy of condonation of delay.

8. As such, in answer to the question, it will have to be said that the learned judge ought to have adopted a little more liberal approach rather than one, as is appearing under the impugned order.

9. In the circumstances, the inconvenience caused to the respondents can be mended by imposing reasonable costs.

10. In the circumstances, the impugned order is set aside. Miscellaneous civil application no. 33 of 2016 pending before district judge - 4, Dhule stands granted. Delay stands condoned. Regular civil suit to proceed accordingly.

11. Delay is being condoned subject to payment of costs of Rs.500/- (Rs. Five Hundred only). Costs to be deposited before the lower appellate court within a period of four (4) weeks from the date of receipt of this order.

12. Second Appeal stands disposed of.

13. Consequently, civil application no. 13653 of 2016 filed in this second appeal seeking stay to the impugned judgment and order, also stands disposed of.

[SUNIL P. DESHMUKH]
JUDGE

arp/