

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

CIVIL APPLICATION NO.14410 OF 2017
(Namdev Mahadu Pawar and another Vs. Rukminibai @ Kaushaai
Vitthal Pawar and others)

IN
SECOND APPEAL STAMP NO.34893 OF 2017

Mr.S.S.Dixit, Advocate for the applicants.

CORAM : RAVINDRA V. GHUGE, J.)

DATE : 15/12/2017

PER COURT :

1. The applicants, by this application, seek condonation of delay of 3126 days, which is about 8 years and 2 months, in filing a second appeal.

2. Learned Advocate for the applicants/appellants has strenuously submitted that the appellants are agriculturists and have no knowledge about court proceedings or pendency of court matters.

3. It is stated that a Spl.Civil Suit No.113/1996 was earlier filed by some of the respondents seeking partition in the suit property. The suit was decreed on 29/06/2002 and the applicants were party to

the suit. RCS No.117/1999 was filed in which the applicants were the defendants. The said suit was decreed practically ex-parte on 03/03/2007 as these applicants did not participate in the said matter.

4. This statement of the applicants apparently appears to be false and misleading as these defendants had resisted the said suit by filing a written statement-cum-say at Exh.49. In this backdrop, it cannot be believed that the applicants are ignorant about court litigation or proceedings.

5. These applicants themselves had preferred regular civil appeal alongwith Misc.Civil Application No.64/2007 for condonation of delay. This application has been rejected by the concerned Court after concluding that the delay is wrongly mentioned and the reasons cited are not sufficient. The second appeal alongwith this application has been filed on 30/10/2017 after a delay of about 8 years and 2 months.

6. It is further canvassed that a Regular Darkhast No.67/2007 was filed by the decree holders against these applicants. Notice was issued on 24/07/2007. The said notice was not served upon the

applicants since the report of the bailiff dated 06/09/2007 indicates that the bailiff could not serve the applicants.

7. I find from the report of the bailiff placed on record that the applicants were initially not served. Respondent No.14 is the second applicant in this application and applicant No.1 is her husband. He was party to the execution proceedings.

8. It cannot be believed that the Executing Court has proceeded with the execution proceedings without service on the respondents. No Court, in my view, would proceed to decide the darkhast proceedings without service on the respondents who are judgment debtors. If the applicants became aware about the execution proceedings when the measurement of the land was undertaken or the *Watap Takta* was prepared, they could have initiated the steps in order to bring on record that the execution proceedings were conducted without serving the applicants. No such efforts seem to have been taken.

9. Learned Advocate for the appellants has relied upon the judgment of the Hon'ble Apex Court in the matter of State Bank of India Vs.Vendanathangal Dairy Farm and Others [(2000) 10 SCC

538] to contend that the application for condonation of delay should be a reasoned and speaking order. It is canvassed that the order dated 07/01/2009 passed by the Appellate Court refusing to condone the delay in the Reg.Civil Appeal was unreasoned. This argument would be of no consequence as these applicants were neither alert nor diligent with regard to their pending proceedings.

10. A litigant cannot go to sleep by handing over a brief to an Advocate and leave it to the Advocate to decide the course of the proceedings without even contacting the advocate in any manner whatsoever. The civil application seeking condonation of 8 years and 2 months does not state as to when did the applicants contact their Advocate and whether they were alert and diligent with regard to the order dated 07/01/2009 that was passed rejecting the delay application.

11. When these applicants had engaged an advocate in various proceedings, the ground that the applicants are illiterate and the delay caused is unintentional, cannot be accepted since its an inordinate delay of 8 years and 2 months. In the absence of any averments as to when did these applicants meet their advocate with regard to the order dated 07/01/2009, this application does not

deserve to be entertained.

12. The Hon'ble Apex Court has observed in catena of judgments that there must be finality to litigation. When these applicants did not react to the rejection of their application for condonation of delay in filing the first appeal on 07/09/2007, they cannot be permitted to re-open the litigation after about 8 years and 2 months.

13. Considering the above, this application is devoid of merit and stands rejected.

(RAVINDRA V. GHUGE, J.)