

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
CIVIL APPLICATION NO. 8580 OF 1998
IN
FIRST APPEAL (ST) NO. 21175 OF 1997

Smt. Shalan M. Mohite and ors.

.. Applicants

vs.

Baban M. Jadhav and ors.

.. Respondents

None for the Applicant.

Mr. D.R. More for Respondent No.2.

CORAM : M. S. SONAK, J.

DATE : 30 JANUARY 2017.

P.C. :-

1] This civil application seeks condonation of delay in instituting the first appeal against the judgment and award dated 26 November 1991. The first appeal and the civil application for condonation of delay were instituted on 7 August 1996. This means that the delay is of about 6 years or thereabouts.

2] The only reason stated in the civil application is the one at paragraph '2' of the civil application, which reads thus:

"2. The petitioners state that the delay is not intentional, but it has been caused due to poverty of the petitioners. Petitioners state that after death of Mohanrao, petitioners were starving and had no support from anybody. The petitioners were not in position to prefer appeal against the said decision of the Tribunal, since they were under bonafide belief that huge court fees and expenses of lawyers were required to be met which was not possible for them. In addition to this, there was sickness in the family and petitioner No.1 was sick and there was nobody elderly in the family to approach the Advocate to give instructions to file appeal. Even the amount awarded by the Tribunal could not be secured as the respondents had preferred First Appeal in this Hon'ble Court and while admitting the said

appeal, the Hon'ble Court permitted the petitioners to withdraw ttesaid amount deposited by the respondents, on furnishing security. Since the petitioners are not in a position to furnish security, the amount could not be withdrawn. Petitioners had no money to bear the expenses of court fees and other expenses. Recently, petitioners have come to know that courtfee is exempted to the women and they have, therefore, decided to file the appeal. They have good case on merits and bright chances of succeeding in the appeal. The petitioners, therefore, submit that this is a fit case in which delay in filing the appeal should be condoned."

3] The civil application is already dismissed as against respondent Nos.1 and 4. Respondent No.3 has been deleted from the cause title.

4] The delay of over 6 years is quite inordinate. The reasons stated do not constitute sufficient cause for condoning such inordinate delay. That apart, at least, if First Appeal No. 975 of 1992 which was instituted by respondent Nos.1 and 2 were to be pending, there was some scope to consider the appeal instituted by the applicants as and by way of cross-objection therein. However, learned counsel who now appears for respondent No.2 points out that by order dated 13 August 2009 even First Appeal No. 975 of 1992 has been dismissed.

5] In the aforesaid circumstances, it is not possible to condone delay of over 6 years. The civil application is dismissed and consequently, the appeal itself is dismissed.

6] However, in view of dismissal of First Appeal No. 975 of 1992 on 13 August 2009, the applicants herein will be entitled to

withdraw the compensation already granted by the impugned judgment and award, if they have, by now, not already done so.

7] All concerned to act on the basis of authenticated copy of this order.

(M. S. SONAK, J.)

dinesh