

**FARAD CONTINUATION SHEET
IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

**CIVIL APPLICATION NO. 1300 OF 2016
IN
SECOND APPEAL (ST) NO. 7669 OF 2016**

Office Notes, Office Memoranda of Coram, Appearances, court's orders or directions and Prothonotary's orders	Court's or Judge's orders
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Mr. Dhruvad S. Patil for Applicants.

Mr. Vijay Killedar for Respondent Nos. 1 and 2.

CORAM : K. K. TATED, J.

DATE : DECEMBER 19, 2017

P.C.:

1. Heard learned Counsel for parties.

2. This application is preferred by the Applicants/Defendants for condonation of 710 days delay in filing the Second Appeal challenging the Judgment and Decree dated 31st December, 2013 passed by the District Judge-3, Satara in Regular Civil Appeal No. 356 of 2008.

3. In the present proceedings, the Respondents/Plaintiffs have filed Regular Civil Suit No. 172 of 1999 for partition and separate possession of ancestral property. The said suit was partly decreed by the Joint Civil Judge, Junior Division, Wai on 1st September, 2008.

4. Being aggrieved by the said decree, the Applicants/Orig. Defendants have preferred the

Regular Civil Appeal No. 356 of 2008 in the Appellate Court. By order dated 31st December, 2013 the Appellate Court had partly allowed the Appeal to the extent of modification of the decree passed in the Regular Civil Suit No. 172 of 1999 as under :

“ ORDER

[a] It is declared that Plaintiffs, defendant Nos. 2 to 5 in RCS No. 172/1999 are entitled to get 1/10th share each in the suit land described in para No.1 of plaint and defendant No.1 and 10 are entitled to get 1/5th share each in the suit land described in para No.1 of plaint.

[b] Decree in RCS No. 172/1999 dt. 1/9/2008 passed by Jt. Civil Judge, Jr. Dn., Wai is modified accordingly.

[c] Appellants do pay costs of this appeal to the respondent Nos. 1 and 2.

[d] Decree be drawn up accordingly.”

5. Thereafter the Applicants have filed application for certified copy on 22nd January, 2016 and the same was made available on 4th February, 2016. They have filed the present Second Appeal on 23rd February, 2016. Hence, the Applicants have preferred the Civil Application for condonation of 710 days delay.

6. The learned Counsel Mr. Patil for Applicants submits that the Applicants were not

aware about the Judgment and Decree passed by the Appellate Court on 31st December, 2013. He submits that the Advocate who had appeared on behalf of them failed and neglected to inform them about the date of decision and the decision given by the Appellate Court. He submits that when the Respondents/Orig.Plaintiffs have preferred the Execution Application and in that application they have disclosed that the Appellate Court had dismissed the Appeal preferred by the Applicants, Applicants have learnt about the decision given by the learned District Judge-3, Satara which was partly against them. Thereafter they have immediately contacted the Advocate in Appellate Court and filed application for certified copy on 22nd January, 2016 and the same was made available on 4th February, 2016. Thereafter they have preferred the Second Appeal before this Court on 23rd February, 2016.

7. The leaned Counsel for Applicants submits that there was a delay on the part of Applicants to file Second Appeal for want of knowledge about the decision given by the Appellate Court against them. Therefore, in the interest of justice, this Hon'ble Court be pleased to condone the delay and matter to be heard on its own merits.

8. The learned Counsel for Applicants submits that Applicant Nos. 1 and 2 are senior citizens having age of more than 70 years, whereas the Applicant Nos. 5 and 6 are the students. He submits that Applicant No.3 is in service whereas Applicant No.4 does job on daily wages. He further submits that the Applicants were unaware about the actual meaning of the impugned order passed by the Appellate Court. Not only that, their Advocate Mr. U. N. Shinde kept them in dark. Because of that it remained on the part of the Applicants to challenge the impugned order passed by the Appellate Court within the period of limitation. In support of this contention, the learned Counsel for Applicants relies on para nos. 10, 11 and 12 of the said Application which read thus :

“10. The Applicants/Appellants state that Applicants are poor litigants. The Applicant No.1 and 2 are senior citizens having the age of more than 70 years, whereas the Applicant No. 5 and 6 are the students. The Applicant No. 3 is in service whereas the Applicant No.4 does job on daily wages. Under these circumstances, it was not possible for any of the Applicants to pursue the matter regularly.

11. The Applicant Nos. 3 and 4 are the only earning members of the family. To earn the bread and butter, they are required to do hard work and it

was not possible for them to contact the Advocates regularly. They had kept blind faith on the Advocate and they were under a genuine impression that Appeal is pending for final disposal.

12. *The Respondent Nos. 1 and 2 have filed an Execution Application for execution of Judgment and Decree passed in RCS No. 172/1999. The Applicants have engaged Advocate to represent them in said execution proceedings. The Advocate informed them about the decision passed in Civil Appeal No. 356/2008. Immediately, thereafter, the Applicants applied for obtaining certified copies and the same were supplied to the Advocate. Upon going through the Judgment and order, it was revealed that part of the order is against the interest of the Applicants. The Advocate also suggested challenging the said order by filing appropriate Appeal.*

Note on Title :

The Respondent No.4 Smt. Chabutai Kisan Jagtap and Respondent No. 6 Shri Ramrao Jagtap died on 8.9.2014 and 1.7.2015 respectively i.e. after the pronouncement of impugned Judgment and Order. The Respondent Nos. 4A to 4C and 6A to 6C are the only legal heirs of said deceased Respondents. Hence, the Applicants have impleaded them as party Respondents. Hence, there is change in the cause title. Hereto annexed and marked as Exhibit "A" colly are copies of Death Certificate."

9. The learned Counsel for Applicants submits that in the interest of justice this Hon'ble Court be pleased to condone the delay in filing Second Appeal.

10. The learned Counsel for Applicants submits that Applicants are having good chance of success in the present Second Appeal. If delay is not condoned, irreparable loss will be caused to them.

11. On the other hand, learned Counsel Mr. Killedar appearing on behalf of original Plaintiffs/Respondent Nos. 1 and 2 had vehemently opposed the present Civil Application. He submits that the present Civil Application is required to be dismissed on the ground of incorrect statement made by the Applicants "that the Applicants were unaware about the order passed by the Appellate Court" and "they were unaware about the actual meaning of impugned order". He submits that para 8 of the civil application reads thus :

"8. The delay in filing the present Second Appeal is caused solely on the ground of unawareness about the actual meaning of impugned order, the Applicants had kept blind faith on the words of Adv. Shri U. N. Shinde. The delay is neither deliberate nor intentional. The Applicants being poor litigants, had no knowledge about the legal formalities and since all along the Applicants were under genuine

impression that Lower Appellate Court has passed the order in their favour.”

12. The learned Counsel for Respondent Nos. 1 and 2/Original Plaintiffs submits that the Applicant No. 3 was in police service whereas Applicant No.4 was doing dairy business. To that effect, Applicants themselves have made averments in Civil Application on Page 6 & 7 which reads thus *“The Defendant No.2 was in police services whereas Defendant No.3 was doing dairy business. The said Defendants by using their independent source of income purchased the said lands. Therefore, Plaintiffs have no right to claim any share in the said lands. 1/4th share from out of land bearing Gat No. 245 has been purchased by Defendant Nos. 2 and 3 under Sale Deed dated 19.7.1993. Similarly, 1/4th share from out of land bearing Gat No. 211 was purchased on 24.4.1985 by Defendant No.1. All the transactions were completed by using the funds derived from individual businesses. The members of joint family never had any role to play while purchasing the said properties.”*

He submits that though the Applicant No. 3 was in police service, the Applicants have made the statement before this Court of illiteracy and financial difficulty. Therefore, the present Civil Application is required to be dismissed.

13. The learned Counsel for Respondent Nos. 1 and 2 submits that Applicants have not shown the sufficient grounds for condonation of inordinate delay of 710 days in filing Second Appeal. He submits that when the trial court had passed the Judgment and Decree on 1st September, 2008 in Regular Civil Suit No. 172 of 1999, the Applicants/original Defendants have filed the Regular Civil Appeal No. 356 of 2008 within time i.e. on 13th October, 2008. This itself shows that Applicants have knowledge about the proceedings to be taken in the Court of law to protect their own interest. Therefore, there is no question of allowing the present Second Appeal.

14. The learned Counsel for Respondent Nos.1 and 2 submits that if the Civil Application is allowed, irreparable loss will be caused to the Respondent Nos. 1 and 2/Original Plaintiffs, because of lapse of time rights have created in their favour. Hence, Civil Application is required to be dismissed with costs.

15. I have heard both the sides at length.

16. It is to be noted that Civil Application is filed for condonation of inordinate delay of 710 days on the following grounds –

- i) Illiteracy;
- ii) Financial condition;

- iii) Want of knowledge about the order passed by the Appellate Court; and
- iv) Applicant Nos. 1 and 2 are senior citizens.

17. It is to be noted that the Applicants themselves in their Application on page no.6 specifically stated that Defendant No.2 was in police service whereas Defendant No.3 was doing the dairy business. This itself shows that there is no question of financial difficulty and/or illiteracy. Apart from that, when the trial court had passed the decree against them, Applicants have immediately filed the Appeal in Appellate Court. This itself shows that Applicants have knowledge to protect their interest in case an order goes against them. Applicants are enjoying the possession and fruits of the property.

18. Applicants have no knowledge about the order passed by the Appellate Court, cannot be a ground for condonation of delay. Because the Applicants have not filed Affidavit of the concerned Advocate Mr. U. N. Shinde stating that he had not informed to the Applicants about the order passed by the Appellate Court.

19. It is to be noted that the Apex Court in the matter of **Damodar Pillai Vs. South Indian Bank Ltd, 2005(5) All.M.R. 961 (SC)** held that hardship or injustice is not a ground for extending the period of limitation. The Apex Court in the matter

of **Pundlik Jalam Patil Vs. Ex.Engg. Jalgaon Medium Project and Ors, 2008(6) BCR 513** held that unless and until sufficient cause is shown, inordinate delay should not be condoned. The Apex Court in the matter of **Oriental Aroma Chemical Industries Limited Vs. Gujarat Industrial Development Corporation** reported in **2010 (5) SCC 459**, held that in the absence of sufficient cause, Court should not condone the delay. The Apex Court in the case of **B. Madhuri Gaud Vs. B. Damodar Reddy, 2012 (12) SCC 693** held that if sufficient cause is not shown, delay should not be condoned. The Apex Court in the matter of **Esha Bhattacharjee Vs. Managing Committee of Raghunathpur Nafar Academy** **2013(12) S.C 450** held that if sufficient cause is not shown, application for condonation of delay needs to be rejected.

20. Considering these facts and the Judgment of the Apex Court as stated herein above, Applicants have not made out a case for allowing the Civil Application. Hence, the following order.

ORDER

(A) Civil Application stands dismissed.

(B) In view of the dismissal of Civil Application for condonation of delay, nothing is survived in Second Appeal (St) No. 7669 of 2016.

Hence, registration of Second Appeal is rejected.

(C) Civil Application No. 1301 of 2016 is preferred for stay of the operation and implementation of the order passed by the Appellate Court. In view of dismissal of Civil Application for condonation of delay, nothing is survived in this Application. Same also stands rejected, as infructuous.

(D) No order as to costs.

(K.K.TATED, J.)