

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

CIVIL APPLICATION NO.1216/2017 IN
SECOND APPEAL ST. NO.9626/2017

Subhash Tulshiram Bhakte ..vs.. Sub Divisional Officer, Akola & Ors.

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's Orders.

Court's or Judge's orders.

Mr. Ranjeetsingh Gahilot, Advocate for applicant.
Mr. K. R. Lule, A.G.P. for non applicant-State.

CORAM : V.M. DESHPANDE, J.
DATED : NOVEMBER 22, 2017

1. Heard Mr. Ranjeetsingh Gahilot, learned counsel for the applicant and Mr. K. R. Lule, learned A.G.P. for non applicant no.1.

2. This is an application for condonation of delay under Section 5 of the Limitation Act. By this application, the applicant is praying that this Court should condone the delay of 3705 days in preferring the second appeal.

3. Mr. Ranjeetsingh, learned counsel for the applicant, invited my attention to the averments made in the application and also made oral submission that due to paucity of funds and the fact that the applicant was having serious medical problem, he was restrained from filing the second appeal before this Court. He also invited my attention to the medical certificates in respect of his ill health issued by Cardiologist. He therefore submitted that

the second appeal could not be filed within the stipulated period since the reasons for not filing of the second appeal were beyond his control and hence the application requires consideration.

4. Normally, the Courts are always liberal to issue notices to the non applicants and have their say on the applications for condonation of delay. Normally, even though the applications are opposed on the appearance being put by the non applicants, if the Court is of the view that there are reasons restraining to the applicants to approach to the Court within stipulated period, the Court grants applications for condonation of delay. However, after perusing the application under consideration and after hearing the learned counsel for the applicant, I am of the view that the present applicant is not entitled even for issuance of the notices to the non applicants.

5. The applicant is original plaintiff. He filed civil suit bearing Regular Civil Suit No.450/2004 in the Court of Civil Judge Senior Division, Akola. The said suit was for declaration and permanent injunction. The declaration that was sought was that the order passed by the non applicant no.1-Sub Divisional Officer, Akola should be declared null and void as the said authority is not having any jurisdiction. The second prayer for injunction was also made not to interfere with the encroachment made by the plaintiff on the suit site.

6. The learned Judge of the trial Court, after a full dress trial, found that the applicant has failed to make out any case in his favour. Consequently, on 16.03.2006, the suit was dismissed.

7. Being aggrieved by the said dismissal, the applicant-plaintiff filed Regular Civil Appeal No.59/2006. The learned Principal District Judge, Akola on 05.12.2006 dismissed the appeal after giving opportunity of hearing to the applicant and his counsel.

8. The applicant is intending to challenge these two judgments and decrees before this Court by filing the second appeal. The second appeal was presented in the registry of this Court on 26.04.2017 to challenge the aforesaid judgments and decrees which were passed in 2006. Thus, there is a delay of about 3705 days. That requires the applicant to file the present application.

9. According to the learned counsel for the applicant, the applicant was suffering from serious heart ailment. Therefore, he was unable to take immediate steps for filing the second appeal. He invited my attention to the medical certificates filed on record. Perusal of the medical certificates shows that those are issued by Dr.Prashant Waychal, Chaitanya Hospital, Akola, Rath Hospital, Patokar Hospital, Ashok Hospital, etc. What is pertinent to note here is that the certificates are from the

year 2010 till 2012. Thus, even accepting all these certificates as it is, it is clear that the applicant was suffering during the period from 2010 to 2012 only. The impugned judgment is passed in the year 2006. Thus, it was expected from the applicant to point out as to what was the cause and as to why he was unable to approach this Court from 05.12.2006 till 2010. There is no explanation whatsoever in nature for these four years.

10. Further from 2012 till 2017 also there is no explanation as to why the applicant could not file the appeal before this Court. Insofar as the financial restraints are concerned, no details are given and the cursory statement is made that he was having financial difficulty. The cause title of the application shows that the applicant is in service. The valuation of the second appeal is done by the applicant to the extent of Rs.1200/- only and it does not require much of the stamp.

11. Further, it is to be noted that the certified copy was applied on 11.08.2016 and it was obtained on 20.08.2016. The application was drafted on 26.07.2016. However, the second appeal is presented before this Court on 26.04.2017. There is no explanation whatsoever as to why from 26.07.2016 till 26.04.2017 the applicant was unable to approach this Court for filing the second appeal.

12. All the aforesaid chronology shows that the applicant is not a diligent litigant. Law always extends help for the litigants who are diligent in prosecuting their remedy. No case is made out even for issuance of the notice. The application is therefore rejected. No order as to costs.

JUDGE

kahale