

IN THE HIGH COURT OF JUDICATURE AT BOMBAY:
NAGPUR BENCH : NAGPUR
Civil Application [CAO] No. 877 of 2017
IN
Civil Application [CAS] No. 461 of 2017
IN
Second Appeal St. No.10068 of 2017
[Dhananjay Madhukar Vaidya Vs. Shantaram Dattatraya
Patwardhan & others]

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

Court's or Judge's orders

Mr. V. A. Dhabe, Adv., for the applicant.
Mr. V. V. Bhangde, Adv., for respondent no.1.

- - - -
CORAM : A. S. CHANDURKAR, J.

DATE : 24th July, 2017

Considering reasons mentioned in the application, the same is allowed. The documents filed along with the application are permitted to be relied upon in support of the prayer for condonation of delay.

Civil Application is disposed of.

-0-0-0-

Civil Application No. 461 of 2017 :

By this application, it is prayed that the delay of

344 days in filing the Second Appeal be condoned. In the application, it is stated that the first appellate Court decided the appeal on 29th August, 2015. On account of the medical condition of the applicant, he could not file the appeal immediately. Though a certified copy was obtained in March, 2016, another certified copy was obtained on 29th April, 2017, after which the Second Appeal was filed. In support of the prayer for condonation of delay, documents indicating the applicant having undergone medical treatment are sought to be relied upon. Reliance is also placed on the judgment of the Honourable Supreme Court in **Apangshu Mohan Lodh & others Vs. State of Tripura & others** [(2004) 1 SCC 119]. It is, therefore, submitted that as legal prejudice is likely to be caused if the delay is not condoned, the application be allowed.

The application is opposed by the non-applicant no.1 by filing reply. It is stated therein that after the decree was passed by the first appellate Court, execution proceedings were filed in which the applicant had participated. His applications dated 1st October, 2015, 20th October, 2016 and 10th November, 2016 are sought to be relied upon in that regard. It is further submitted that there is no explanation as to the steps taken for the period from 29th August, 2015 till March, 2016. It is, therefore, submitted that false reasons have been assigned for having the delay condoned and reliance is placed on the judgment of Honourable

Supreme Court in **Pundlik Jalam Patil (dead) by LRS Vs. Executive Engineer, Jalgaon medium Project & another** [(2008) 17 SCC 448].

I have heard the learned counsel and I have perused the documents on record.

The judgment of the first appellate Court is dated 29th August, 2015. Though in the application, it is stated that certified copy was initially obtained in March, 2016, there is no explanation as to the steps taken by the applicant from 29th August, 2015 till March, 2016. The documents filed on record are dated 4th and 16th April, 2016 which indicate that the applicant was hospitalized during said period. Another document filed indicates the applicant being under treatment since 3rd May, 2016.

In the execution proceedings filed by the decree holder, the present applicant had moved an application under provisions of Order-XLI, Rule 5, Civil Procedure Code, dated 1st October, 2015. This application is signed by the applicant. Thereafter, there is yet another application filed on behalf of the applicant dated 18th October, 2016. These documents indicate the participation of the applicant in the execution proceedings. The last Medical Certificate is for the period May, 2016 and other documents indicate his participation in the execution proceedings thereafter.

Though it is true that the power of condoning delay has to be exercised liberally as observed in *Apangshu Mohan Lodh & others* [supra], in the present case, there is no explanation for the cause of delay for the period from 29th August, 2015 to March, 2016 and even from October, 2016 till April, 2017. The learned counsel for the non-applicant is justified in placing reliance on the decision in *Pundlik Jalam Patil* [supra]. I find that the applicant was actively participating in the execution proceedings, during which period, the appeal could have been filed. Hence, the explanation furnished by the applicant is not at all sufficient to condone the delay. The application, therefore, stands rejected. Consequently, the Second Appeal also does not survive.

Judge

[hedau]