

IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
BENCH AT AURANGABAD

CIVIL APPLICATION NO.4168 OF 2018 IN
SECOND APPEAL ST. NO.1676 OF 2018

Smt. Chandrakala w/o Baburao Birajdar
and another ...APPLICANTS

VERSUS

Sanjay s/o Baburao Birajdar
and others ...RESPONDENTS

.....

CORAM: A.M. DHAVALÉ, J.

DATED : 24th November, 2018.

ORAL ORDER :

1. Special Civil Suit No.23/2001 filed by the appellants herein was dismissed by Civil Judge, Senior Division, Latur on 30.12.2009. Regular Civil Appeal No.333/2012 preferred by them came to be partly allowed with costs on 26.10.2016. A decree for partition was passed in respect of Shop No.23 giving 1/4th share each to the appellants No.1 and 2, but not in respect of other suit property. The present appeal along with application for condonation of delay is filed on 17.1.2018. The application shows that there is delay of 349 days.

2. The respondents are served, but have not filed any

reply. The application and record show that the appellants claimed that they were poor and were not in a position to bear the expenses of Advocate's fees. They, therefore, approached the State Legal Services Committee, Mumbai. The Advocate was provided to them, but later on it was noticed that the matter pertains to Aurangabad Bench. Hence, they were forwarded to the Legal Services Sub-Committee, High Court, Bench at Aurangabad.

3. The applicants claim that, the delay has been caused due to their illiteracy, lack of legal knowledge and approaching the Legal Services Committee, Mumbai instead of Legal Services Sub-Committee at Aurangabad. Thereafter some time was consumed in collecting the certified copies. Therefore, the delay of 349 days may be condoned.

4. The respondents though served, have not filed any reply. The contentions raised by the applicants have gone uncontroverted.

5. The only point for my consideration is whether the delay in preferring the appeal deserves to be condoned. The record reveals that, the applicant No.1 is aged 65 years. Their important rights in respect of immovable properties are involved. The applicants were not in a position to engage Advocate and they have approached the High Court Legal Services Committee

at Mumbai. The Legal Services Committee should have immediately asked the applicants to approach this Court, but the Committee realised that they have no power to appoint Advocate at State expenses in Aurangabad after six months and the applicants were directed to approach this Court.

6. Still there is some lethargy and negligence on the part of applicants, but there are justifiable grounds to partly explain the delay. In the interest of justice, the facts are liberally construed and the application is allowed subject to costs of Rs.1000/- (Rupees one thousand only). The applicants to deposit the costs within three weeks, failing which the application shall stand dismissed. If the costs are deposited, the appeal be taken up for numbering.

(A.M. DHAVAL)
JUDGE

fmp/