

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

**934 CIVIL APPLICATION NO. 1162 OF 2016
IN SAST/4395/2014**

**RAHIBAI TATYABA SHENDGE (DIED) THR. LR. RAMBHAU
TATYABA SHENDGE
VERSUS
MANIK VISHWANATH @ EKNATH GANDGE AND OTHERS**

...
Advocate for Applicant : Shri Akash Gade h/f.
Shri Sudarshan J. Salunke
Advocate for Respondent Nos.2 and 3 : Shri P.N.Muley
...

CORAM : P.R.BORA, J.

DATE: 1st August, 2018

PER COURT:-

1 By filing the present application, delay of 4003 days is sought to be condoned by the applicant which has occurred in filing the Second Appeal by him.

2 It is the contention of the applicant that after filing of the First Appeal, it was told to him by the Counsel, who was appearing for him in the said Appeal that his presence may not be required for hearing of the said Appeal and that he will keep him informed about the progress in the Appeal. It is the further contention of the applicant that he therefore, was bonafide believing that his Appeal

was pending for consideration, since nothing was communicated to him by his Counsel.

3 Learned Counsel further submitted that in the year 2013, when some revenue entries were attempted to be made in respect of the properties involved in the matter, the applicant came to know that the First Appeal filed by the applicant was dismissed in the year 2003 itself. It is further contended that after knowing about dismissal of the First Appeal, by taking all prompt steps, the present Second Appeal has been filed by the applicant in this Court.

4 The learned counsel further submitted that the delay caused in filing the Second Appeal is unintentional and without any fault on the part of the applicant. The learned Counsel submitted that valuable rights of the applicant are involved in the matter and as such opportunity needs to be given to the applicant to agitate the matter on merits. The learned Counsel has therefore, prayed for condoning the delay so that the Second Appeal can be registered and can be heard on merits.

5 The learned counsel appearing for the respondent Nos.2 and 3

has opposed for condoning the delay stating that inordinate delay has not been properly explained by the applicant.

6 The only reason that is assigned by the applicant to justify the delay in approaching the Court is that there was no communication from the side of Counsel, who was appearing for the applicant in the First Appeal, about the decision rendered in the said Appeal. It is also the contention of the applicant that the applicant was told by the Counsel that during the pendency of the Appeal in the First Appellate Court, his day to day presence was not required.

7 The delay which has occurred in filing the Second Appeal by the applicant is of the huge period of more than ten years. Even if the contention of the applicant that the Counsel, who was appearing for him in the First Appeal had told him that his presence may not be required on every date in the said Appeal, it does not in any way mean that the applicant was absolved from his obligation to keep track with the progress in the said Appeal. The applicant was surely not expected to inquire every week with his Counsel as to what happened in his Appeal, however, the applicant was certainly under an obligation to keep track with the Appeal filed by him. It appears

improbable and unconscionable that during the long period of more than ten years, the applicant did never bother even once to contact his Counsel to know the progress in his First Appeal. In the absence of any strong evidence, the contention of the applicant that there was no communication from his Counsel about dismissal of the First Appeal, also appears difficult to be accepted. It is apparently revealed that the applicant has shown gross negligence in prosecuting the First Appeal.

8 Law is well settled that if the proper explanation is given, the delay of longer period also can be condoned, but if no sufficient cause is made out, the delay of the smaller period also cannot be condoned. When the time for preferring the Appeal expires, a very valuable right is accrued to the successful litigant and the Court ought not to lightly set aside the Judgment unless it is satisfied that sufficient cause was there for the delay in filing the Appeal.

9 In the present matter, the applicant has utterly failed in giving any justifiable reason for the delay of more than ten years in filing the Second Appeal by him. I am therefore, not inclined to accept the request made in the application. In the result, following order is

passed:-

ORDER

- I) Civil Application No.1162 of 2016 is rejected.
- II) Consequently, the Second Appeal on Stamp No.4395 of 2014 also stands dismissed.

(P.R.BORA)
JUDGE