

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

SECOND APPEAL NO.168 OF 2018

Dnyandeo Zopadu Sarode
Since deceased through Legal Representatives

- 1) Bhushan Dnyandeo Sarode
Age : 40 years, Occu : Agriculture,
R/o. Old Nashirabad Road,
Vitthal Peth, Jalgaon, Tal. & Dist. Jalgaon.
- 2) Smt. Latabai Dnyandeo Sarode
Age : 65 years, Occu : Household,
R/o. Old Nashirabad Road,
Vitthal Peth, Jalgaon, Tal. & Dist. Jalgaon.

..APPELLANTS

(Orig. Defendant No.2)

VERSUS

- 1) Abhiman Shankar Pawar
Deceased through his Legal Representatives
- 1A) Shakuntala Abhiman Pawar
Deceased
- 1B) Vikas Abhiman Pawar
Age : 47 years, Occu : Business,
R/o. Kisan Dairy, Nagar Palika Shopping Complex,
Jalgaon, Tal. & Dist. Jalgaon
- 1C) Jagdish Abhiman Pawar
Age : 44 years, Occu : Business
R/o. Kisan Dairy, Nagar Palika Shopping Complex,
Jalgaon, Taluka & Dist. Jalgaon
- 1D) Gajanan Abhiman Pawar
Age : 41 years, Occu : Business,
R/o. Kisan Dairy, Nagar Palika Shopping Complex,
Jalgaon, Taluka & Dist. Jalgaon

- 2) The Jalgaon City Municipal Corporation,
Jalgaon
Through its Municipal Commissioner,
Jalgaon City Municipal Corporation,
Jalgaon, District Jalgaon.

.. RESPONDENTS
(No.1- Orig. Pltffs,
No.2-Orig. Deft.No.1)

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Shri G.S. Rane, Advocate for the appellants;
Smt. Chaitali Kutti, Advocate, h/f. Shri P.N. Kutti, Advocate for
Respondents No.1B to 1D;
Shri P.R. Patil, Advocate for Respondent No.2.
Respondent No.1A – Dead.

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CORAM : P. R. BORA, J.
DATE : AUGUST 06, 2018

ORAL JUDGMENT :

1. Heard Shri Girish Rane, the learned Counsel for the appellants, Smt Chaitali Kutti, the learned Counsel for respondents no.1B to 1D and Shri P.R. Patil, the learned Counsel for respondent no.2.

2. The appellants have preferred the present appeal being aggrieved by the order passed by the District Judge-5, Jalgaon in Civil Misc. Application No.321 of 2017 on 23.01.2018. Civil Misc. Application No.321 of 2017 was filed by the present appellants for condonation of delay, which had occurred in filing the First Appeal by the appellants against the

Judgment and decree passed in Regular Civil Suit No.53 of 1999. The learned District Judge vide impugned order has rejected the said application. The said order is challenged in the present Second Appeal.

3. Shri Rane, the learned Counsel appearing for the appellants submitted that, though sufficient cause was made out by the appellants, by taking pedantic approach the learned District Judge has rejected the said application. The learned Counsel submitted that, the entire facts were brought on record before the District Court explaining the reasons for occurrence of delay. The learned Counsel further submitted that, the delay caused though was for bonafide reasons and unintentional, the learned District Judge has failed in appreciating the contentions raised on behalf of the appellants and has rejected the application.

4. The learned Counsel for the appellants has placed reliance on the following Judgments :

- (i) **Collector, Land Acquisition, Anantnag and another Vs. Mst. Katiji and others AIR 1987 Supreme Court 1353,**

(ii) **N. Balakrishnan Vs. M. Krishnamurthy
(1998) 7 Supreme Court Cases 123.**

The learned Counsel relied upon the observations made and the conclusions recorded by the Hon'ble Apex Court in the case of **N. Balakrishnan Vs. M. Krishnamurthy** (cited supra) in para nos.9 to 12 of the said Judgment.

5. Smt Kutti, the learned Counsel appearing for respondents no.1B to 1D resisted the submissions made on behalf of the appellants. The learned Counsel supported the impugned Judgment. The learned Counsel submitted that, the appellants showed gross negligence in prosecuting their matter and the First Appellate Court has, therefore, rightly rejected their application seeking condonation of delay. The learned Counsel, therefore, prayed for dismissal of the Second Appeal.

6. The learned Counsel Shri P.R. Patil submitted for passing appropriate orders.

7. As is revealing from the contents of the application, which was filed by the appellants before the District Court, the deceased respondent viz: Abhiman Shankar Pawar had filed

Regular Civil Suit No.53 of 1999 against the present appellants for declaration and injunction. In the said civil suit, though the present appellants were duly served and though they caused their appearance in the matter, did not file their written-statement and consequently the suit was heard by the civil Court without the written-statement of the present appellants. The civil suit was decreed vide Judgment and order passed by the trial Court on 09.03.2006. The original plaintiff thereafter filed Regular Darkhast No.269 of 2007 in the civil Court. The present appellants appeared in the said darkhast proceeding on 05.10.2012. The learned Counsel for the appellants submitted that, only after appearance in the darkhast proceeding, the appellants became aware of the litigation between the original plaintiff and their father. The learned Counsel submitted that, thereafter all the documents were collected by the appellants and the Judgment and decree passed by the Civil Court was challenged before the District Court by filing the First Appeal. Since the delay had occasioned in filing the First Appeal, the appellants had preferred Civil Misc. Application No.321 of 2017 for condonation of delay. The learned Counsel submitted that, the Counsel, who was

appointed by deceased father of the appellants to conduct the Regular Civil Suit No.53 of 1999 on his behalf, neither filed the written-statement in the matter, nor cross-examined the plaintiff and witness examined by the plaintiff and in the circumstances, the civil suit was decided against the deceased father of the appellants.

8. From the pleadings in the application, it is revealed that, though the present appellants were served with the notice in the darkhast proceeding on 05.10.2012 and accordingly they caused their appearance in the said proceeding before the Civil Court, they did not bother to file the first appeal against the Judgment and decree passed against them in the civil suit till the year -2017. As is revealing from the record, the delay of more than 5 years had occurred in filing the First Appeal before the District Court.

9. The appellants had filed Civil Misc. Application No.321 of 2017 in the District Court at Jalgaon seeking condonation of delay, which had occurred in filing the First Appeal by them against the Judgment and decree passed in

Regular Civil Suit No.53 of 1999 on 09.03.2006.

10. I have carefully perused the contents of the Civil Misc. Application No.321 of 2017. The contents of para no.3 of the said application clearly revealed that, the appellants – applicants had received the notice in Reg. Darkhast No.269 of 2007 arising out of the Judgment and decree passed in Reg. Civil Suit No.53 of 1999 on 05.10.2012. The averments in the application also revealed that, after having served with the summons in the Reg. Darkhast, the appellants also caused their appearance in the darkhast proceeding on 05.10.2012. From the averments of the aforesaid application, it is quite evident that, the appellants though got the knowledge of the Judgment and decree dated 09.03.2006 passed in Reg. Civil Suit No.53 of 1999 on 05.10.2012, the appellants – applicants preferred the First Appeal on 08.10.2017 i.e. after long lapse of more than 5 years. The delay if computed from the date of passing decree in the civil suit, it comes to more than 11 years. Even if it is assumed that, the present appellants were not aware of the pendency of Reg. Civil Suit No.53 of 1999 since their father was looking after the said litigation, there is no explanation from the

appellants as to why they did not prefer the appeal within the reasonable period after they got the knowledge on 05.10.2012 about the *ex-parte* Judgment and decree passed in Reg. Civil Suit No.53 of 1999. In absence of any explanation for the said period of more than 5 years, the learned District Judge has rightly refused to condone the delay caused by the appellants in filing the First Appeal.

11. Though it was sought to be contended by Shri Rane learned Counsel appearing for the appellants that, the delay caused in filing the appeal by the appellants is for all bonafide reasons and unintentional, it is difficult to agree with the submissions so made. From the facts, which I have stated herein above, it is clear that, in spite of becoming aware on 05.10.2012 itself as regards to the decree passed against them the appellants did not show the adequate diligence of filing an appeal against the said Judgment and decree and ultimately the same came to be filed after long lapse of more than 5 years. I reiterate that, there is absolutely no explanation about the said period of 5 years.

12. It is well settled that, the delay of a longer period also is liable to be condoned if the sufficient cause is shown for occurrence of such delay and the delay of even a shorter period also cannot be condoned if no sufficient cause is shown for occurrence of such delay. In the instant matter, in absence of any sufficient cause shown by the appellants for causing delay of more than 5 years, the learned District Judge has rightly rejected their request to condone the delay. I do not see any reason to cause interference in the order so passed. The Second Appeal being devoid of any substance deserves to be dismissed and is accordingly dismissed, however, without any order as to the costs.

13. In view of the decision rendered in Second Appeal, Civil Application No.2995 of 2018 also stands disposed of.

[PR. BORA]
JUDGE

ggp.