

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

BENCH AT AURANGABAD

CIVIL APPLICATION NO.5690 OF 2018 IN
SECOND APPEAL ST. NO.9112 OF 2018

Mandabai @ Sudamati w/o Viram Sukale ... APPLICANT

VERSUS

Bharat s/o Shripati Sukale & ors. ... RESPONDENTS

.....
Shri V.S. Undre, Advocate for applicant
Shri A.B. Tele, Advocate for R.No.3 to 9
.....

CORAM : A.M. DHAVAL, J.

DATED : 19th NOVEMBER, 2018

ORAL ORDER :-

1. The original plaintiff has filed this Second Appeal against the concurrent findings, whereby her suit for partition and separate possession was dismissed and the decree was confirmed in the appeal. The judgment was delivered by Principal District Judge, Osmanabad on 9.3.2012 and this appeal is filed on 24.2.2018 with a delay of almost six years.

2. Learned Advocate Mr. Undre for the applicant argued that the applicant has a strong case on merits. She was

admittedly member of the joint family. Though earlier suit for partition filed by her was compromised, the defendants did not comply with the terms and conditions of the compromise and, therefore, the second suit for partition was maintainable. The concurrent findings are contrary to the provisions of law and there is scope for interference.

3. As far as delay is concerned, apart from good case on merits, he contended that the appellant was very poor and helpless lady having no support. She had engaged Advocate in counter Appeal filed by the defendants, but for want of proper legal advice, she could not file appeal within time.

4. Learned Advocate for the respondents opposed the application, contending that there is huge delay of 2214 days. Such huge delay cannot be condoned on such vague and general grounds raised by the appellants. There is no sufficient cause for condonation of delay.

5. The law with regard to delay condonation was summed up by the Apex Court in **Esha Bhattacharjee Vs. Managing Committee of Raghunathpur Nafar Academy and others, reported in [(2013) 12 SCC 649]** as follows :-

“21. From the aforesaid authorities, the principles that can broadly be culled out are :-

21.1 (I) There should be a liberal, pragmatic, justice-oriented, non-pedantic approach while dealing with an application for condonation of delay, for the courts are not supposed to legalise injustice but are obliged to remove injustice.

21.2 (ii) The terms “sufficient cause” should be understood in their proper spirit, philosophy and purpose regard being had to the fact that these terms are basically elastic and are to be applied in proper perspective to the obtaining fact-situation.

21.3 (iii) Substantial justice being paramount and pivotal the technical considerations should not be given undue and uncalled for emphasis.

21.4 (iv) No presumption can be attached to deliberate causation of delay but, gross negligence on the part of the counsel or litigant is to be taken note of.

21.5 (v) Lack of bona fides imputable to a party seeking condonation of delay is a significant and relevant fact.

21.6 (vi) It is to be kept in mind that adherence to strict proof should not affect public justice and cause public mischief because the courts are required to be vigilant so that in the ultimate eventuate there is no real failure of justice.

21.7 (vii) The concept of liberal approach has to encapsulate the conception of reasonableness and it cannot

be allowed a totally unfettered free play.

21.8 (viii) There is a distinction between inordinate delay and a delay of short duration of few days, for to the former doctrine of prejudice is attracted whereas to the latter it may not be attracted. That apart, the first one warrants strict approach whereas the second calls for a liberal delineation.

21.9 (ix) The conduct, behaviour and attitude of a party relating to its inaction or negligence are relevant factors to be taken into consideration. It is so as the fundamental principle is that the courts are required to weigh the scale of balance of justice in respect of both parties and the said principle cannot be given a total go by in the name of liberal approach.

21.10 (x) If the explanation offered is concocted or the grounds urged in the application are fanciful, the courts should be vigilant not to expose the other side unnecessarily to fact such a litigation.

21.11 (xi) It is to be borne in mind that no one gets away with fraud, misrepresentation or interpolation by taking recourse to the technicalities of law of limitation.

21.12 (xii) The entire gamut of facts are to be carefully scrutinised and the approach should be based on the paradigm of judicial discretion which is founded on objective reasoning and not on individual perception.

21.13 (xiii) The State or a public body or an entity representing a collective cause should be given some acceptable latitude.

22. To the aforesaid principles we may add some more guidelines taking note of the present day scenario. They are :-

22.1 (a) An application for condonation of delay should be drafted with careful concern and not in a haphazard manner harbouring the notion that the courts are required to condone delay on the bedrock of the principle that adjudication of a lis on merits is seminal to justice dispensation system.

22.2 (b) An application for condonation of delay should not be dealt with in a routine manner on the base of individual philosophy which is basically subjective.

22.3 (c) Though no precise formula can be laid down regard being had to the concept of judicial discretion, yet a conscious effort for achieving consistency and collegiality of the adjudicatory system should be made as that is the ultimate institutional motto.

22.4 (d) The increasing tendency to perceive delay as a non-serious matter and, hence, lackadaisical propensity can be exhibited in a nonchalant manner requires to be curbed, of course, within legal parameters.”

6. In the present case, there is huge delay of 2214 days. Considering the length of delay, the same cannot be condoned only on the vague grounds of illiteracy, poverty and lack of legal advice. If such grounds are allowed to be raised for condonation of such huge delay, the provisions of Limitation Act would become redundant.

7. In **Basawaraj Vs. Land Acquisition Officer,** reported in **[2013] 4 SCC 81**, the Hon'ble Supreme Court laid down following principles :-

“Sufficient cause is a cause when a defendant could not be blamed for his absence. It means party should not have acted in negligent manner. Unless satisfactory explanation is furnished, Court should not allow the application for condonation of delay. The Court has to examine whether mistake is bona fide or was merely a device to cover an ulterior purpose.”

8. In **P. Rameshchandra Rao Vs. State of Karnataka** reported in **[(2002) 4 SCC 578]**, it is held that “judicially engrafting principles of limitation amounts to legislating and would fly in the face of law laid down by the Constitution Bench in Abdul Rehman Antulay Vs. R.S. Nayak.”

9. In the light of above judgments, I find that, this is not a fit case where huge delay can be condoned. Hence, the Civil Application is rejected. However, it is made clear that this order will not come in way in filing Cross-Objections under Order XLI Rule 22 in the counter appeal. Court fee on the Second Appeal be refunded as per rules.

(A.M. DHAVAL, J.)

fmp/