

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

928 CIVIL APPLICATION NO.5316 OF 2018
IN SAST/9328/2018

WITH

CA/5318/2018 IN SAST/9328/2018

DHONDU SHAKHARAM PATIL

.. APPLICANT
(Orig.Defendant)

VERSUS

NANDLAL WAGHUMAL KUKARELA,
DECEASED THROUGH LRS.-
SMT. GURABAI NANDLAL KUKREJE
AND OTHERS

.. RESPONDENTS
(Orig.Plaintiffs)

...

Advocate for Applicant : Mr.Patil Vinod Prakash

CORAM : P.R.BORA, J.

DATE : 27th July, 2018.

PER COURT :

1) Head Shri V.P.Patil, learned counsel
appearing for the applicant/appellant.

2) The applicant has presented the Second
Appeal challenging the judgment and order passed
by learned 4th Additional District Judge, Jalgaon

in Misc. Civil Application No.168/1995 decided on 3rd April, 1998. Since delay of 7203 days has occurred in filing the second appeal, present application is filed by the applicant seeking condonation of the said delay.

3) Respondent herein had filed Special Civil Suit No.84/1989 against the present appellant, seeking specific performance of agreement of sale. The said civil suit was decreed. Aggrieved by the judgment and decree so passed in the said civil suit, the appellant/applicant preferred the First Appeal before the District Court at Jalgaon. Since delay had occurred in filing the first appeal, Misc. Civil Application No.168/1995 was preferred by the applicant, seeking condonation of delay caused in filing the first appeal. The learned District Judge dismissed the said Misc. Civil Application, vide order passed on 3rd April, 1998. Against the said order, the applicant has preferred the present second appeal in the year

2018 and along with the said appeal has filed the present application seeking condonation of delay, which has occurred in filing the second appeal.

4) In the decree passed by the Joint Civil Judge, Senior Division, Jalgaon in Special Civil Suit No.84/1989, the defendant therein was directed to execute the sale deed of the suit property in favour of the plaintiff within six months from the date of the order after obtaining the requisite permission from the competent authority to transfer the suit field and to handover the possession thereof to the plaintiff. It is the contention of the present applicant that though the defendant applied for such permission to Tahsildar, Erandol, the same was refused and further order was passed by the Tahsildar thereby forfeiting the subject land to the Government. It is the further contention of the applicant that though the present respondent, i.e. original plaintiff challenged the said order before the Sub Divisional Officer, Jalgaon, the

appeal so filed was dismissed by the said authority. The respondent then preferred Tenancy Revision Application before Maharashtra Revenue Tribunal, Mumbai. The Tribunal also did not cause interference in the order passed by the Tahsildar and confirmed by the Sub Divisional Officer, Jalgaon. Against the order passed by the Tribunal, the respondent filed writ petition No.5329/1995 before the High court and the High court has allowed the said writ petition. The learned counsel submitted that in view of the order passed by the High Court in the writ petition, now the decree passed in Special Civil Suit No.84/1989 has become enforceable. The learned counsel submitted that in such circumstances, the present applicant had preferred the second appeal challenging the order passed by the District Court rejecting the application for condonation of delay which has occurred in filing the first appeal by the present appellant. The learned counsel submitted that the delay, which has occasioned is

unintentional and, therefore, prayed for condoning the same.

5) Having considered the facts as are stated in the application and reproduced by the learned counsel in his submissions before the Court, unhesitatingly it can be said that the applicant has not made out any case even for issuance of notice to the respondent and the application filed by the applicant deserves to be rejected in *limine*. From the documents filed on record, it is quite evident that for getting the fruits of the decree passed in his favour way back in the year 1994, the present respondent was agitating in different forums for long 24 years and ultimately succeeded in the writ petition before the High Court. As stated herein above, though the decree of specific performance was granted in favour of the respondent/plaintiff, the defendant was under an obligation to obtain the requisite permission from the revenue authority. Merely because the revenue

authorities did not grant such permission to the defendant and the respondent/plaintiff was, therefore, required to litigate up to the High Court, that cannot be a justification available for the appellant/defendant to file the second appeal belatedly, i.e. after about 20 years, against the judgment and order passed by the District Court in Misc. Civil Application No.168/1995. The civil application being devoid of any substance deserves to be rejected at the threshold and is accordingly rejected. Consequently, the second appeal on stamp number also stands dismissed. Pending civil application, if any, stands disposed of.

(P.R.BORA)
JUDGE

bdv/
fldr 26.7.18