

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

SECOND APPEAL NO.326 of 2017

1. Vishwanath s/o Nivrutti Bade,
Age 56 years, Occu. Agri.,
R/o Chinchwan, Tq. Wadwani,
Dist. Beed.

2. Nivrutti s/o Pandurang Bade,
Age 80 years, Occu: Agri.,
R/o Chinchwan, Tq. Wadwani,
Dist. Beed.

...APPELLANTS
(Ori.Def.No.1 & 2)

VERSUS

Sakhubai w/o Vishwanath Bade,
Age 49 years Occu: Agri. & Household,
R/o Chinchwan Tq. Wadwani,
Dist. Beed.

...RESPONDENTS
(Ori.Plff.)

...

Mr. S.W.Mundhe, Advocate for the appellants.
Smt. Amita Chate, Advocate, h/f Mr. S.S.Thombre,
Advocate for sole respondent.

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CORAM: P.R. BORA, J.
DATE : June 18th, 2018.

ORAL JUDGMENT:

1. Heard finally at the admission stage.

2. The appellants have challenged the order passed in Miscellaneous Civil Application No.53/2016 whereby the first appellate Court has rejected their request to condone the delay caused in filing the First Appeal by them.

3. The applicants were the defendants in Regular Civil Suit No.187/2008 (Old RCS No.58/2003). The applicants did not file their written statement and, as such, 'No W.W.' order was passed against them. The applicants did not remain present even thereafter at the time of hearing of the suit and, as such, the aforesaid Civil Suit was decreed by the Civil Judge, Junior Division, Wadwani, on 9th of December, 2011. The applicants preferred First Appeal against the judgment and decree passed by the trial Court before the District Court at Beed and since the appeal was not filed within the period of limitation, filed an application for condonation of delay which was registered as Miscellaneous Civil Application No.53/2016. The appellants were expected to file First Appeal on or before 1st of January, 2012. However, the applicants filed the First Appeal on 15th of November, 2016. The delay of four years and ten months had thus occurred in filing the said appeal by the applicants. The learned District Judge-I, Majalgaon, vide the impugned order rejected the said application. Aggrieved thereby, the applicants have approached this Court.

4. Shri S.W.Mundhe, learned Counsel appearing for the applicants, submitted that the first appellate Court has grossly erred in not accepting the justification given by the

applicants for occurrence of the delay in filing the First Appeal. Learned Counsel further submitted that the first appellate Court ought to have considered that the applicants are the residents of remote village and their Counsel had not informed them about the progress in the suit and, as such, the applicants could not contest the suit on merits. Learned Counsel submitted that the trial Court must have considered that the suit was decided without written statement of the defendants and without hearing the defendants and in the circumstances, must have given an opportunity to the applicants to contest their appeal on merits by condoning the delay. Learned Counsel, therefore, prayed for allowing the appeal filed by the applicants and to remand the same to the trial Court for its disposal on merits.

5. I have perused the impugned order as well as the application which was preferred by the applicants before the first appellate Court seeking condonation of delay. I deem it appropriate to reproduce hereinbelow the entire text of the said application which reads thus:

"The applicants most humbly submit as under:

1] That, the applicants have filed appeal against the Judgment and decree passed by Learned Civil Judge, J.D. At Wadvani in RCS No.187/2008 (Old RCS No.58/2003).

2] That, as the suit is decreed on dated 09/12/2011, the appeal ought to have been filed on or before 08/01/2012. Thus there is delay in filing the appeal.

3] That, in suit, applicants appeared but have not filed their written statement and hence not contested the suit. Thereafter they remained absent in the Court and have no knowledge about date of proceeding and its result. Even previous advocate are also not informed them about decision of the suit.

04. That, the applicants are residing in remote area. There is gap communication in between appellants and their counsel hence they could not get knowledge about decision,

5. That, the delay caused is not intentional and caused due to above circumstances.

6. That, the matter is in respect of landed property in which their valuable rights are involved.

7. That, if delay is not condoned the applicants shall suffer irreparable loss which cannot be compensated in terms of money.

8. That, in the interest of justice and equity it is essential to condone the delay in filing appeal since 08/01/2012 till today.

An affidavit is filed.

Hence prayed that

Application may kindly be allowed and delay caused in filing appeal since 08/01/2012 to 15/11/2016 may kindly be condoned and appeal may kindly be registered beyond period of limitation.

Majalgaon
Dt.15/11/2016

Applicants"

6. On perusal of the application as aforesaid filed by the present applicants, it does not appear to me that the learned first appellate Court has committed any error in rejecting the said application. In the application filed before

the first appellate Court, the applicants have not disclosed as to when they got the knowledge about the judgment and decree passed in Regular Civil Suit No.187/2008 (Old RCS No.58/2003). Further, in the entire application, the applicants have not provided any cogent and sufficient reason to justify the huge delay of four years and ten months in filing the First Appeal. The only reason which has been assigned in the said application is that the applicants are residing in the remote area and their Counsel did not give any knowledge to them about the decision rendered in the Regular Civil Suit.

7. It is true that while dealing with the application for condonation of delay, Court has to adopt the justice oriented approach and the phrase 'sufficient cause' has to be construed liberally. However, it is also well settled that if the applicant fails in showing any sufficient cause for occurrence of delay, even if the delay may be of a short period, it also cannot be condoned. In the instant matter, admittedly, the delay is of a huge period of four years and ten months. I reiterate that in the entire application, the text of which I have purposely reproduced hereinabove, the applicants have not shown any such reason or have not made out any ground which can be accepted as a sufficient cause beyond the control of the

applicants so as to exercise the discretion in their favour.

8. It is also necessary to look into the conduct of the applicants in conducting the civil suit before the trial Court. The material on record reveals that though the present applicants were duly served and though they entered their appearance in the matter, did not file their written and, as such, 'No W.S.'" order was passed against the applicants on 19th of December, 2003. The material on record further reveals that thereafter though the suit was pending for hearing for quite a long time and ultimately came to be decided on 9.12.2011 i.e. after the period of about eight years, the applicant did not bother to appear before the Court, did not cross examine the plaintiff and also did not adduce any evidence on their behalf. The applicants have not provided any explanation as to why they did not appear and defend aforesaid civil suit when they were duly served with the summons in the said suit, and the suit was pending for decision for long eight years.

9. The period for preferring an appeal cannot be extended on sympathetic grounds or merely out of benevolence to the party seeking relief. The Court granting the indulgence

must be satisfied that there was diligence on the part of the appellant and that he was not guilty of any negligence whatsoever. It cannot be lost sight of that after the time for preferring the appeal expires, a very valuable right is accrued to the successful litigant and the Court ought not lightly get the appeal admitted unless it is satisfied that sufficient cause is shown for the delay in filing the appeal.

10. In the instant matter, it is revealed that the applicants were grossly negligent throughout and did not show any cause much less the sufficient cause for condonation of delay. The trial Court has, therefore, rightly rejected their request to condone the delay. It does not appear to me that any error has been committed by the learned first appellate Court. The Appeal being without any merit, deserves to be dismissed and is accordingly dismissed.

(P.R.BORA)
JUDGE

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AGP/326-17sa