

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

CIVIL APPLICATION NO. 7286 OF 2013 IN SAST/13167/2013
WITH CA/7287/2013 IN SAST/13167/2013

DASHRATH NAMDEO EKHANDE AND OTHERS
VERSUS
ASHABAI BHAGWAN CHAVAN AND OTHERS

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Mr.Jitendra Patil h/f. Mr. P.R.Katneshwarkar Advocate for Applicants.
Mr.R.D.Bhalerao, Advocate for Respondents No. 1,2b To 2g,4 R/5,6a To
6d, 7 to 16.

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CORAM : P. R. BORA, J.
DATED : 13th AUGUST, 2018.

Order :-

1. Heard learned counsel appearing for the applicants.
2. The applicants have filed the present Second Appeal against the Judgment and Order passed in Regular Civil Appeal No. 18 of 2018, delivered by the District Judge -1, Sangamner, District Ahmednagar, on 18th November, 2010. Since the appeal has not been preferred within the period of limitation, the applicants have filed civil application, seeking condonation of delay of 799 days, which has occasioned in filing the appeal by them.
3. The present applicants No. 1 and 2 were the defendants No. 3 and 4 in Special Civil Suit No. 190 of 1995. The aforesaid Special Civil Suit was filed by present respondents No. 1 and 2 for declaration that the sale deed dated 20th December, 1994 executed by the original defendants No. 1 and 2 in favour of the present applicants was void and also for partition and possession

of 1/4th share in the suit lands and also seeking injunction and mesne profits. The learned Civil Judge vide Judgment and Order passed on 11-04-2000 declared the sale deed dated 20th December 1994 to the extent of 51 R land in favour of the present applicants, as null and void. Aggrieved by the said Judgment, applicant No.3 in the present application namely Nanubai Bhaurao Pawar, who was defendant No.1 in the Special Civil Suit, filed Regular Civil Appeal No. 18 of 2008. In the said appeal, present applicants were respondent Nos. 4 and 5.

4. It is the contention of applicant Nos. 1 and 2 that original defendant No.1 Nanubai had assured them that she will take all care to protect the interest of present applicant Nos.1 and 2 in the suit land. It is the further contention of the applicants that, relying on the assurance given by said Nanubai, present applicant Nos.1 and 2 did not find it necessary to look into day-to-day progress in the said first appeal and also did not initiate any independent proceedings against the order passed against them in Special Civil Suit No. 190 of 1995. It is further contended that though the Regular Civil Appeal No. 18 of 2008 was dismissed on 18-11-2010, nothing was informed by said Nanubai to present applicant No.1 in that regard. It is further contended that present applicants came to know about the dismissal of the first appeal only when the bailiff approached them in Regular Darkhast No. 346 of 2000.

5. It is further contended by the applicants that they had promptly preferred the present appeal after having come to know that the Regular civil Appeal No. 18 of 2008 was dismissed.

6. The learned counsel for the applicants submitted that since the present applicants had purchased the suit property from Nanubai Pawar and when she had assured the applicants to take care of their interest in the suit land, they were fully depending upon said Nanubai and were carrying an impression that appeal is pending and said Nanubai is looking after said appeal. Learned counsel further submitted that, delay caused in filing the appeal is unintentional and there are no malafides in occurrence of the delay in filing the appeal by applicants. The learned counsel therefore prayed that condoning the delay and to give an opportunity to applicants to prosecute their appeal on merits.

7. Mr. Bhalerao, learned counsel appearing for the respondents opposed for condoning the delay. He tendered across the bar the affidavit in reply on behalf of the respondents.

8. Somewhat unusual circumstances are noticed in the present matter. The first appeal is jointly filed by original defendant Nos. 1, 4 and 5. The application for condonation of delay is also jointly filed by the aforesaid three persons. However, the learned counsel advanced the argument in such a manner as if he was representing only applicant Nos. 1 and 2. In his arguments, the learned counsel put the entire blame on

applicant No.3 Nanubai. It was his contention that, said Nanubai had assured applicant Nos. 1 and 2 that she will take care of their interest in the suit property, and as such, they were under an impression that said Nanubai is properly prosecuting the appeal even on their behalf. Though, in the application it is not expressly alleged that said Nanubai did not inform applicant Nos. 1 and 2 about dismissal of the first appeal, from the other averments, it can be gathered that it is the only allegation of applicant Nos. 1 and 2 that said Nanubai did not diligently prosecuted the first appeal and after dismissal of the appeal did not inform applicant Nos.1 and 2 in that regard. Aforesaid is the only reason assigned for occurrence of delay.

9. The only reason as has been assigned for occurrence of delay, is liable to be rejected for the reason that Nanubai, against whom allegations are made, is the co-applicant in the present application. It is not the case of the applicants that Nanubai was not aware of the Judgment delivered by the First Appellate Court. Moreover, the documents on record reveal that, in the First Appeal, applicant No.1 was independently represented by Advocate Shete. It is nowhere the contention of the applicant that Advocate Shete did not conduct the appeal on his behalf or that he did not communicate him about the Judgment passed in the First Appeal. In absence of any such contention, it has to be presumed that Advocate Shete duly conducted the First Appeal

on behalf of applicant No.1 and also communicated to him about the Judgment passed in the First Appeal.

The applicants have, thus, failed in explaining the huge delay of more than two years occurred in filing the Second Appeal. Though, it is true that, the words "*sufficient cause*" employed in Section 5 of the Limitation Act, 1963, are to be construed liberally. It is also well settled that the Courts can not be oblivious of the rights accrued in favour of the decree-holder. In the present matter, the suit was admittedly filed in the year 1995. From the material on record, it is quite evident that, the applicants were grossly negligent in prosecuting their matter. As I noted here-in-above, the reason assigned for occurrence of delay is absolutely false. I am, therefore, not inclined to allow the present application. Hence, the following order :-

ORDER

1. The application is rejected.
2. Consequently, the Second Appeal as well as pending Civil Application also stand dismissed.

**[P. R. BORA]
JUDGE**

rrd.