

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

CIVIL REVISION APPLICATION NO. 122 OF 2018

**SUDAM WAMANRAO RAJBHOJ
VERSUS
LAXMIBAI VISHWANATH SONGIRE AND OTHERS**

...
Advocate for the Petitioner : Shri A. M. Gholap

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CORAM : RAVINDRA V. GHUGE, J.

DATED : 29th SEPTEMBER, 2018.

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PER COURT :

1. The applicant/original plaintiff in RCS No. 570/2006 is aggrieved by the order dated 19/04/2018 passed by the Appellate Court in MARJI No. 221/2015, by which, the said application seeking condonation of delay of 49 days in preferring the Appeal has been allowed and the appellant is saddled with costs of Rs. 10,000/- which is said to have been deposited before the Appellate Court.

2. The Learned Advocate for the applicant has strenuously criticized the impugned order. He submits that primarily two grounds have been put forth by the appellant while seeking condonation of 49 days delay caused in filing the Regular Civil

Appeal. The first is that one Mr. Satish Jaykar was looking after the litigation on behalf of the concerned defendants. He was handling the litigation right from the stage of taking the signatures of the defendants on the Vakalatnama, engaging the Advocate and attending the court hearing. His name was arrayed as defendant No.30. Since his name was deleted by the plaintiff, he lost interest. The learned Advocate submits that Satish Jaykar was defendant No.1 and defendant No.30. Since his name appeared at two places in the same suit, he was deleted as defendant No.30 and he continued as defendant No.1.

3. Secondly, that the husband of Laxmibai was working as a peon in the District Court. He gathered the information that the suit was decreed. These defendants have not filed their written statement though an Advocate was engaged. Laxmibai was keeping an eye on the proceedings through her husband.

4. In my view, the law of condonation of delay has now been crystalized in view of the judgments of Honourable

Apex Court in the matters of of *Collector, Land Acquisition, Anantnag V/s Mst. Katiji, AIR 1987 SC 1353* and *Esha Bhattacharjee V/s Managing Committee of Raghunathpur Nafar Academy and others, (2013) 12 SCC 649*).

5. In the case of *Esha Bhattacharjee (supra)*, the Honourable Apex Court has culled out certain principles which are to be considered while entertaining an application for condonation of delay.

6. In my view, if the delay is deliberate or inordinate and if laches/ulterior/oblique motives are attributed to the conduct of the applicant, even if the delay may not be large, such application need not be considered. So also, if no such attributes are made and if the refusal to condone the delay is likely to render the litigants remediless, the delay should be condoned.

7. I find from the record that there seems to be some confusion between the defendants and Satish Jaykar who appears to be leading the defendants in the litigation. These

applicants contend that he seems to have lost interest in the suit. The fact remains that this petitioner has virtually got a walk over as the defendants did not enter their written statement and did not contest the suit in which immovable property is involved. I also find that the learned Trial Court has been imposed costs of Rs. 10,000/- for condoning the delay of 49 days.

8. In this backdrop, I do not find that the impugned order could be termed as being perverse or erroneous in view of the law laid down by the Honourable Apex Court in the matters of *Syed Yakoob V/s K. S. Radhakrishnan, AIR 1964 SC 477* and *Surya Dev Rai V/s Ram Chander Rai, AIR 2003 SC 3044*.

9. This petition, being devoid of merit is, therefore dismissed.

(RAVINDRA V. GHUGE, J.)

shp/-