

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

**917 CIVIL APPLICATION NO. 2104 OF 2016
IN RC/1009/2004 IN SAST/24130/2002**

**RUKIYA BEGAM GULAM HUSSAIN (DIED) THR.LRS.GAZALA
AND OTHERS**

VERSUS

SITARAM RAMA MALI AND OTHERS

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Advocate for Applicants : Shri Avinash M.Nagarkar

Advocate for Respondent Nos.1, 2A to 2D :

Adv.Sunita G.Sonwane h/f. Shri V.V.Deshmukh and

Adv.Mansi P.Joshi

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CORAM : P.R. BORA, J.

Date: July 27, 2018

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PER COURT :-

1 Heard Shri A.M.Nagarkar learned Counsel for the applicants and learned Counsel appearing for the respondents.

2 This is an application seeking condonation of delay, which has occasioned in filing the application for restoration of the Second Appeal on Stamp No.24130 of 2002. It is revealed from the record that the Second Appeal was preferred by the present applicants in the year 2002 and its

registration was refused on 16.07.2003. For setting aside the said order, the applicants have preferred the present application after lapse of about 13 years.

3 Learned Counsel Shri Nagarkar appearing for the applicants strenuously urged that gross injustice is caused to the present applicants though they are having very strong case in their favour. The learned Counsel in the circumstances submitted that while considering the delay caused in filing the application, the Court shall also take into account merits in the contention of the applicants raised in the memo of Appeal. The learned Counsel submitted that the delay caused is unintentional and without any fault on the part of the applicants. The learned Counsel further contended that earlier Counsel, who was appearing for the applicants did not disclose or communicate to the applicants that the Second Appeal filed by them has not been registered and the registration

has been refused on 16.07.2003. The learned Counsel submitted that after sufficient period, when nothing was communicated to them about the same Second Appeal, applicants on their own contacted the Counsel appearing for them and asked him about the progress in the appeal, however, no particulars were provided by the said Counsel and in the circumstances by obtaining 'No Objection' from the said Counsel, the applicants on their own find out that registration of the Second Appeal was refused in 2003 itself. The learned Counsel submitted that thereafter by collecting the documents, the applicants have immediately preferred the present application.

4 The learned Counsel relying on the Judgment of the Hon'ble Apex Court in the case of ***S.P.Chengalvaraya Naidu Vs. Jagannath***, reported in ***1994 AIR 853*** submitted that delay caused in filing the present application be condoned and the Second Appeal on Stamp be registered so that the

applicants can get the opportunity to adjudicate their matter on merits.

5 The learned Counsel appearing for the respondents has opposed for condonation of huge delay, which has occasioned in filing present application. The learned Counsel submitted that the reasons as are assigned in the application are not only insufficient but are not supported by any cogent fact and as such inordinate delay caused in filing the application shall not be condoned.

6 I have duly considered the submissions made by the learned Counsel appearing for the parties. I have also perused the contents of the application and other material placed on record by the applicants. It is stated that the present applicants have preferred Regular Civil Suit No.231 of 1996 on 11.09.1996 before the Civil Court for recovery of possession of the subject land. The Civil Suit so filed by them was

dismissed by the Trial Court on 25.08.1999. The applicants thereafter, preferred Regular Civil Appeal No.315 of 1999 before the District Court, however, the said appeal was also dismissed on 09.07.2002. Thereafter, the applicants have filed Second Appeal before this Court.

7 The applicants were admittedly agitating for recovery of possession of certain agricultural land claiming the same to be owned by them, which was allegedly in the possession of the defendants. In the circumstances, it appears improbable and unnatural that during the long period of 13 years after filing of the Second Appeal, the applicants would not have even once made enquiry as to what has happened in their Second Appeal. Further, mere submission that nothing was disclosed or communicated to them by their Counsel also cannot be accepted. The applicants were under an equal obligation to take care of their matter.

8 In the present matter, it appears that for a long period of 13 years, the applicants were sleeping over their rights and did not bother to inquire as to what happened in the Second Appeal in the High Court. Inordinate delay caused cannot be condoned on the reason that there was no communication from their Counsel.

9 As I mentioned herein above, the Suit was filed by the applicants/appellants for possession of the agricultural land claiming the same to be belonging to them from the possession of the defendants. Having considered the subject matter, gross negligence shown by the applicants and inordinate delay committed by them in seeking the restoration of the Appeal leads to an inference that probably they have lost interest in prosecuting the matter.

10 The matter viewed from any angle, it does not appear to me that there is any justification or

any sufficient cause made by the applicants for condoning the delay of 13 years.

11 In the result, the following order is passed:-

ORDER

Civil Application No.2104 of 2016 is rejected.

(P . R . B O R A)
JUDGE

SPT