

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

CIVIL APPLICATION NO. 13192 OF 2015 IN
FIRST APPEAL ST. NO. 29991 OF 2015

Ratanprabha Tukaram Deshmukh
& others

Applicants

Versus

Sumanbai Tukaram Deshmukh
& another

Respondents

Mr. G.J. Kore, advocate for applicants.
Ms. Sheetal Salunke, advocate holding for Mr. V.D. Salunke,
advocate for respondents 1 and 2.

CORAM : M.S. SONAK, J.
DATE : 14th FEBRUARY, 2018

PER COURT:

1. This is an application seeking condonation of delay of 976 days in institution of the appeal.
2. Applicants have stated that originally the matter before the trial Court was before the Civil Judge, Junior Division, Osmanabad. Applicants filed their reply opposing grant of any heirship certificate to respondents. Thereafter, on 13.08.2012, the matter was transferred to Civil Judge Senior Division, Osmanabad. The matter was disposed by the Civil Judge, Senior Division, Osmanabad on 05.11.2012 by holding that the applicants despite filing reply have not bothered to adduce any evidence in support of their reply.
3. Learned counsel for applicants submits that the applicants

have made a categorical statement that they have received no notice from the Civil Judge Senior Division, in pursuance to transfer of the proceeding. He submits that therefore, neither they nor their advocate had any knowledge about disposal of the proceeding on 05.11.2012. It is submitted that they got knowledge about the impugned order only when respondents, relying upon the order, applied for mutation of their names before the Talathi. This was sometimes in July 2015. Applicants then applied for copy of the impugned order on 20.07.2015 and the same was received on 28.07.2015. It is submitted that there is sufficient cause for non-institution of appeal within prescribed period of limitation. It is submitted that there is no serious lapse on their part and in any case, the lapse is not at all malafide. For all these reasons, learned counsel for applicants submits that delay may be condoned.

4. On the other hand, Ms. Sheetal Salunke, learned counsel for respondents submits that the applicants had filed their reply before the Civil Judge Junior Division and thereafter it was their responsibility or the responsibility of their advocate to pursue the matter, adduce evidence if, they desire. She submits that the delay of 976 days has not at all been satisfactorily explained. She submits that serious prejudice will occasion to respondents in case, delay is condoned.

5. Upon perusal of the record and upon due consideration of the rival submissions, it is true that there is some lapse on the part of the applicants as contended by Ms. Salunke. However, the lapse is not of such a nature that should dis-entitle them from instituting appeal or pursuing the appeal.

6. It is not disputed that no notice was issued by the Civil Judge, Senior Division, Osmanabad consequent upon transfer of proceeding on 13.08.2012. The explanation that the applicants got knowledge about the impugned order only when respondents applied for mutation does not seem to be a malafide explanation. In such matters, it is not the length of the delay but, it is the quality of the explanation that matters. In most cases, when condonation is applied for, there is some lapse on the part of the party applying for condonation. However, that by itself, is not a ground to non-suit such applicants. If the explanation does not smack of malafides or it is not put forth as part of a dilatory strategy, the court must show utmost consideration to the case of the applicants.

7. However, the Court cannot forget the opposite side altogether. No doubt, as contended by Ms. Salunke, some prejudice will occasion respondents if delay is condoned. Prejudice however, is compensable in terms of cost.

8. Therefore, upon taking into consideration the cause shown, delay in institution of this appeal subject to applicants paying cost of Rs. 4,000/- to respondents within a period of four weeks from today. The amount of cost may be either directly paid to the respondents or deposited int his Court within a period of four weeks from today, so that respondents can withdraw the same unconditionally. Respondents are granted liberty to withdraw the amount of cost unconditionally, if deposited within four weeks from today.

9. If the amount of cost is not deposited within four weeks from today then, this civil application shall be deemed to have been dismissed without any further reference to the Court.

10. Applicants to give necessary intimation of deposit of amount to the learned counsel for respondents.

11. Civil application stands disposed of in aforesaid terms.

(M.S. SONAK, J.)

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