

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

**48 CIVIL APPLICATION NO. 15917 OF 2016
IN SAST/35218/2016 WITH CA/15898/2016 IN
SAST/35218/2016**

**EKNATH GODHAJI BAGUL AND OTHERS
VERSUS
SAWLIRAM BALA BAGUL AND OTHERS**

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Advocate for Applicants : Ms. Manjushri V. Narwade
AGP for Respondent Nos. 2, 4 to 6 : Mr. D.K. Muley and Mr.
A.D. Sugdare.
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CORAM : V.L. ACHLIYA, J.

DATED : 08th OCTOBER, 2018

PER COURT:-

1. The applicants have moved this application for condonation of 1084 days delay in filing the Second Appeal for the reasons set out in detail in the application.
2. Heard the learned counsel for the applicants – appellants and the learned counsel representing the respondent nos. 2, 4,5 and 6. All other respondents though served absent.
3. In brief, it is the contention of the learned counsel for the applicants-appellants that the delay caused in filing the appeal was caused due to reason that the applicants were

prosecuting the remedy by filing the review application before the first appellate court. It is submitted that immediately after the appeal was decided, the review application was filed on 02.12.2013. In order to file Second Appeal before this Court, the application came to be filed on 07.09.2016 before first appellate court for permission to withdraw the review application. By order dated 14.10.2016, the applicants were permitted to withdraw the review application. Immediately thereafter, the present appeal has been filed along with the application seeking condonation of delay. In the process, delay of 1084 days has been caused in filing the appeal. It is contended that as the applicants were prosecuting the remedy by way of review, the delay caused in filing appeal deserves to be condoned.

4. The respondent nos.2, 4, 5 and 6 have opposed the application by filing the affidavit-in-reply. They have denied the caused assigned for condoning the delay. It is contended that there are concurrent decisions rendered by the Courts below and there is absolutely no merit in appeal filed by the appellant. In order to prolong the matter, the applicants-appellants have deliberately filed the review application fully knowing that no case exists to seek review of judgment and

order passed by the first appellate court. They prosecuted the review application for a period of three years and also adduced evidence. When the review application reached the stage to be decided on merits and the applicants being aware the fate of the application, they moved application to withdraw the review application so as to file second appeal and thereafter, the present appeal has been filed.

5. In the background of the over all facts of the case, the learned counsel for the respondents submits that there are no bona fides on the part of the applicant to file this application and seeks condonation of 1084 days delay in filing second appeal. It is contended that before filing the suit leading to filing of this appeal, the applicants had earlier filed the suit seeking same reliefs as R.C.S. No.268/1996. The said suit came to be dismissed in default of the applicants-plaintiffs to prosecute vide order dated 19.11.1999. Thereafter, in the year 2003, the applicants filed fresh suit based upon same cause of action seeking similar reliefs. The said suit came to be dismissed on merit by judgment and decree passed on 08.04.2011. The appeal preferred before the District Court came to be dismissed on merit vide judgment and order dated 04.09.2013. Thereafter, on 02.12.2013, the applicants filed

review application knowing well that no case exists to file such review. The review application was prosecuted for three years. When the review application taken up for hearing on merit and the applicant fully aware the fate of application, withdrawn that application and filed the present appeal alongwith application seeking condonation of 1084 delay. In this factual matrix of the matter, the learned counsel submits that there is absolutely no bona fides on the part of the applicants in filing the present application. Under the pretext of filing proceedings one after other, the applicants have succeeded to continue to occupy the suit property without any lawful right. It is contended that no sufficient cause has been assigned to condone the delay of 1084 days in filing the second appeal and urged to reject the application.

6. Having appreciated the submissions advanced in the light of over all facts of the case, I am of the view that no case is made out to condone the 1084 days delay in filing the Second Appeal. The cause assigned cannot be treated as a sufficient cause to condone the delay of 1084 days. The contention of the applicants that they were prosecuting the remedy by way of review application before the first appellate court cannot be treated as a good cause to condone the delay

so also cause assigned cannot be treated as a cause falling within the scope of Section 14 of the Limitation Act to exclude the period during the applicants were proceeding remedy by way of review of judgment and order. It is no where the case of the applicants that they were acting under the wrong advice or they were bonafidely prosecuting the remedy before wrong forum by filing review application. It is pertinent to note that after filing the application for review, the applicants have prosecuted said application for the period of about three years. When the application reached the stage of final disposal, the applicants have withdrawn the application and filed appeal alongwith application for condonation of delay, which itself reflects that the applicants have not acted with bona fide intention in filing application for review and same was filed with oblique motive to prolong the possession of suit property.

7. There are concurrent decisions rendered by the Courts below. The applicants-plaintiffs have admitted that the deceased Bala i.e. the father of respondent nos.1 and 2 was adopted by Dagadu and Balubai. The decision in suit is not merely based upon the long standing mutation entries in the revenue record showing the father of respondent nos. 1 and 2 as owner of property on the basis of adoption but based upon

the evidence adduced in the case and material admission brought through cross examination. The trial court as well as the appellate court has thoroughly considered the rival pleadings and evidence while deciding the suit as well as appeal. There is no perversity in the decisions rendered by the courts below. In that view, the applicants cannot claim that serious prejudice would cause to them if delay is not condoned.

8. Thus, considering the over all facts of the case, the conduct of the applicants and absence of sufficient cause to condone the delay, I am not inclined to allow the application. Accordingly, the application is rejected. In consequence of rejection of application for condonation of delay, the appeal as well as the civil application for stay stands disposed of in terms of rejection of application for condonation of delay.

(V.L. ACHLIYA)
JUDGE

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