

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

2 CIVIL REVISION APPLICATION NO. 3 OF 2017

1. Dinesh s/o Vitthal Pawar
Age: 37 years, Occu.: Agril.
2. Santosh s/o. Vitthal Pawar
Age: 33 years, Occu.: Agril.

Both R/o.Panvi Budruk,
Tq.Vaijapur, Dist.Aurangabad.

VERSUS

1. Hirabai w/o.Navnath Falke
@ Hirabai D/o. Ramchandra Pawar
Age: 54 years, Occu.: Agril,
R/o.Hanumantgaon, Tq.Vaijaur,
Dist.Aurangabad.
2. Shantabai w/o. Ramchandra Pawar
Age: 82 years, Occu.: Agril,
R/o.Panvi Budruk, Tq.Vaijapur,
A/P.R/o.Hanumantgaon, Tq.Vaijapur,
Dist.Aurangabad.

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Advocate for Applicants : Mr.Ghanwat Nikhil P
Advocate for Respondents : Mr.Jadhav Mangesh R.
and Mr.Maradkar P.B.

...

CORAM : M.S.SONAK, J.
DATE : 29.1.2018

ORAL JUDGMENT:-

1) Rule. With the consent and the request of the learned counsel for the parties, rule is made returnable forthwith.

2) The challenge in this revision application is to the order dated 11.11.2016 by which the Ad-hoc District Judge, Vaijapur, has condoned the delay of seven years and four months in instituting appeal against the Judgment and decree dated 7.4.2008 made by the Trial Court, subject to payment of costs of Rs.500/-.

3) Normally, this Court is very liberal when it comes to condonation of delay. In cases where discretion has been exercised and delay has been condoned, the revisional jurisdiction is rarely exercised unless malafides or suppression of material facts is detected.

4) In the present case, although the delay is of seven

years and four months, the application for condonation of delay, which was made on 7.9.2015 and which comprises in all five paragraphs, really discloses no sufficient cause whatsoever. Rather this is a case where vital and material facts were suppressed with impunity by the respondent.

5) The entire application dated 7.9.2015 is transcribed below for reference of convenience:-

"Appellant most humbly submits as under,

01. That, the applicant No.1 Hirabai is aunt & applicant No.2 Shantabai is grandmother of Non-appellant No.1 & 2. The real fact is that the land Gut No.73 admeasuring 18 Acre 16 Guntha to extent 6 Acres 05 Guntha Acre which is situated at village Panvi Budruk Tq.Vaijapur, Dist.Aurangabad. The appellant is now is real owner and possessor of the above said suit property land.

02. That, the appellants say and submits that, it is crystal clear that, the deceased father of applicants namely Ramchandra Pawar owner of the agri land No.73

admeasuring 18 Acre 16 Guntha which is situated at village Panvi Budruk, Tq.Vaijapur, Dist.Aurangabad. The above suit land was and is acenstral property of the applicant & non appellants.

03. That, the after the death of Ramchandra Pawar this property is mutated in the name of his son Vithal Pawar 12 Acre 11 Guntha and Non appellant No.3 Shantabai 6 Acre 5 Guntha applicants is close relative of Non-applicant.

05. That, the Judgment and Decree under challenge is passed on 07/04/2008. As per the law of limitation, the appeal is required to be filed within 30 days. The applicant No.1 Hirabai is handicap and economically very poor person. Her medical expenses are very heavy; she cannot save money from her income to file appeal, in respect of her heavy medical expenses. So she unable to approach and filed Appeal. Appellant No.2 Shantabai is very old person, her age about 85 years. She has no any source of income to expend it. So, they could not filed appeal within limitation. There is delay of about 7 years & 4 months in preferring the appeal which is unintentional, accidental and the same could not be filed within time for the reasons stated herein above. Separate affidavit is filed herewith. Thus,

in the interest of justice, by using the discretion the delay in filing the appeal deserves to be condoned.

Hence it is prayed

01. This application of the appellant ant may kindly be allowed.

02. Delay of 7 years 4 months to filing this appeal kindly be condoned and oblige.

Date: 07/09/2015

Applicant

Through,

*Ramkrishna P.Bodkhe
Advocate, Vaijapur.*

*sd/-(Thumb Impression)
(Hirabai Navnath Falke)*

*sd/-(Thumb Impression)
(Shantabai Ramchandra Pawar)"*

6) Since, the delay was opposed, the applicant Hirabai stepped into the witness box and deposed in support of the application seeking condonation of delay. In the application as well as deposition, the applicant insisted that she is economically very poor and therefore was unable to institute the appeal within the prescribed

period of limitation. To that, the respondent also added that she is handicapped and illiterate.

7) The Trial Court has allowed the application for condonation of delay by an order, which is infact more cryptic than the application by which the delay was applied to be condoned. All that the Trial Court held is that Hirabai is a handicapped woman and a poor lady. Her mother is 85 years of age and since liberal approach is required to be adopted in matters of condonation of delay, sufficient cause has been made out to condone the delay of seven years and four months by imposing costs of Rs.500/-.

8) Now, alongwith the memo of revision application, the applicants has annexed registered Sale-Deed dated 12.9.2014, which indicates that the applicant including in particular Hirabai, who is stated to be old, poor and handicapped, has sold the property, which is the subject

matter of the Suit and the appeal to one Maya for consideration of Rs.21,07,000/-. The registered Sale-Deed is dated 12.9.2014 i.e. prior to said Hirabai taking out application for condonation of delay on 7.9.2015 and depositing in support of the same.

9) On 24.1.2018, in order to afford the respondent opportunity to explain this position, this matter was adjourned by making the following order:-

"P.C.:

The challenge in this Revision Application is to the order dated 11.11.2016, by which the appeal Court has condoned delay of 7 years and 4 months incurred by the respondents in instituting the appeal against the judgment and decree dated 7th April, 2008.

2 *The application for condonation of delay was filed by the respondents on 07.09.2015 and in the application, which comprises of only 5 paragraphs, it is stated that the applicant*

Hirabai is an handicapped person and economically very poor person. Her medical expenses are very heavy and could not save money from her income to file appeal and, therefore, she was unable to institute an appeal. Same is stated about Shantabai.

3 In support of the application, Hirabai in fact stepped into witness box and deposed that her financial position was extremely poor and, therefore, she could not institute an appeal within prescribed period of limitation.

4 Now, along with memo of revision petition, the applicant has produced Registered sale deed 12.09.2014, which indicates that Hirabai has in fact sold property, which is the subject matter of the suit and appeal, to one Smt. Maya, for consideration of Rs.21,07,000/-.

5 Learned Counsel for the respondents submits that from perusal of the sale deed, it does appear that Hirabai has sold suit property to Smt.Maya. However, he stats that he does not have any detailed instructions and, therefore,

requests for some time to obtain instructions.

6 On his request, matter is adjourned to 29.01.2018. To be placed high on board.

7 It is made clear that if by 29th January, 2018, no instructions are obtained or if there is no appearance on behalf of respondents, this Court will be constrained to proceed in the matter.

8 Stand over to 29.01.2018 for final disposal.

Sd/-
M.S.SONAK
JUDGE "

10) Today, the learned counsel for the respondents submits that as on 7.5.2015, the applicants had already instituted another Suit challenging registered Sale-Deed dated 12.9.2014. Further, he points out in the reply filed by the applicant herein to oppose the application for condonation of delay or in the cross-examination, there was no reference of registered Sale-Deed dated

12.9.2014. He submits that the applicant ought not be permitted to refer to the said Sale-Deed in this petition. Learned counsel for the respondent states that there is no intention to suppress and infact the fact of execution of the Sale-Deed was also disclosed to the lawyer, who prepared the application for condonation of delay on 7.9.2015. However, it is the lawyer, who did not deem it appropriate to mention this fact in the application seeking condonation of delay for seven years and four months in instituting the appeal. On this grounds, learned counsel for the respondents submitted that there is no case of suppression and in any case, there is no case of willful suppression and therefore, the impugned order may not be interfered with.

11) As noted earlier, apart from the fact that no sufficient cause is shown to explain the inordinate delay of seven years and four months, except stating that the respondents are poor, handicapped and illiterate persons,

it is really the duty of the respondents/original applicants, who seeks condonation of delay to disclose true and correct facts to the Court. The contention that since the respondents did not point out these facts to the Court in the first instance, such facts, should be ignored, cannot be accepted. No doubt, in such matters a liberal approach is warranted. However, the liberality cannot extend or condone suppression of vital and relevant facts, which demolish the case of economic poverty, which was main stake for seeking condonation of delay for seven years and four months. To put a blame on the Advocate is also not proper in the facts and circumstances of the present case. In this case, the first respondent, despite the decree dated 7.4.2008, chose to sell the property to third party in the year 2014. Thereafter, in the year 2015, application for condonation of delay was applied for by suppressing this relevant and vital fact. The Sale-Deed indicates that Hirabai has received an amount of Rs.21,07,000/- and

despite of receipt of such amount, Hirabai maintains that she is poor person, even on oath. This is clearly malafide and in such circumstances there was no question of any indulgence in favour of the respondents, particularly, when the delay was of seven years and four months.

12) Normally, one of the reasons for liberal approach is the presumption of party seeking condonation of delay has not gained anything in the meantime. In the present case, the respondent No.1 has gained practically everything in the meanwhile and by suppressing this relevant and vital fact, condonation of delay was applied for in a very casual manner. The impugned order also witness casuality in considering the application and condoning such inordinate delay.

13) In case of *N.Balakrishnan vs. N.Krishnamurthy* [1998 (7) SCC 123], the Supreme Court has stated that if

explanation does not smack of malafides or is not putforth as part of dilatory strategy, the Court must show utmost consideration to the suitor, but when there is reasonable ground to think that delay was deliberately to gain time then the Court lean against acceptance of the explanation.

14) In this case, it is apparent that delay was a part of strategy to defeat the decree made in the year 2008. Accordingly, so called explanation deserves rejection.

15) For the aforesaid reasons, the civil revision application is allowed.

16) The impugned order dated 11.11.2016 is hereby set aside.

17) The application for condonation of delay made by the respondents is hereby dismissed. As a consequence,

the appeal instituted by the respondents also stands dismissed.

18) In the facts and circumstances of the present case, the respondents to pay costs of Rs.5,000/- to the applicants.

[M.S.SONAK, J.]