

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

930 CIVIL APPLICATION NO.155 OF 2018
IN SAST/38748/2016

WITH

CA/156/2018 IN SAST/38748/2016

1. PANDURANG S/O MUNJAJI GADEKAR DIED (HENCE
FORMAL PARTY) & OTHERS

VERSUS

TANAJI S/O GOVIND GADEKAR & OTHERS

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Advocate for Applicants : Mr. S.N.Lavekar
Mr. Patil Ramchandra S., Adv. For R/1 To 3.

CORAM : P.R.BORA, J.

DATE : 3rd August, 2018.

PER COURT :

1) Heard learned counsel for the parties.

2) Delay of 2767 days is sought to be
condoned in filing the present second appeal by
the applicants/appellants against the judgment
and decree passed in Regular Civil Appeal
No.76/2004 dated 24th February, 2009 by Ad hoc
District Judge-1, Kandhar.

3) The only reason, which has been assigned
by the applicants to justify the delay, is that

because of want of communication and coordination between the applicants and the advocate, they did not get information regarding passing of the impugned judgment by the first appellate court.

4) The delay caused in filing the appeal is of the period of more than 7½ years. For condoning the inordinate delay of such huge period, the reason, as has been assigned by the applicants is apparently unacceptable. Regular Civil Appeal No.76/2004 was filed against the present applicants on 6.11.2004. It came to be decided on 24th February, 2009. The present applicants were duly represented in the said appeal through lawyer appointed by them. Though in para 4 of the application the applicants have taken a plea that their advocate before the first appellate court did not communicate the fact that the judgment has been passed in first appeal on 24.2.2009, in the immediately next paragraph, a different plea is raised by the applicants that because of want of communication and coordination

between the applicants and the advocate, they did not get information regarding passing of the impugned judgment.

5) A bare statement that the advocate did not communicate the decision of the first appeal, in my opinion, may not be a sufficient justification to condone the huge delay of more than 7½ years. Firstly, from the averments in the application, it cannot be certainly said whether their advocate did not communicate the decision of the first appeal to the applicants or the applicants were not in due contact with their counsel. Whatsoever may be the reason, the fact remains that till July 2016, the applicants did not bother to know as about the progress in the Regular Civil Appeal which was filed against them in the year 2004. The applicants cannot be absolved from their duty to take care of their matter. Though the applicants were not expected to make enquiry with their counsel in every fortnight or month as to what happened to their

matter, it cannot be accepted that for more than 7½ years, they did not even bother to contact their advocate even once to know the progress in the first appeal filed against them.

6) The conduct of the applicants apparently reveals that they were grossly negligent in prosecuting the first appeal and the negligence on their part is the only reason that they could not come to know about the decision in the first appeal till they receive the notice in Darkhast proceeding. In the circumstances, the contention on behalf of the applicants that the delay occurred on their part is unintentional and for bonafide reasons, cannot be accepted. When the time for preferring the appeal expires, a very valuable right is accrued to the successful litigant and the court ought not to lightly set aside the judgment unless it is satisfied that sufficient cause was there for the delay in filing the appeal. The court cannot extend the period of limitation merely out of benevolence to

the party seeking the relief. The court granting indulgence must be satisfied that there was diligence on the part of the applicant and that he was not guilty of negligence whatsoever.

7) The applicants have failed in showing any just and sufficient cause to condone the huge delay of more than 7½ years. The application, therefore, deserves to be rejected and is accordingly rejected. Consequently, the second appeal on stamp also stands dismissed. Pending civil application, if any, stands disposed of.

(P . R . BORA)
JUDGE

bdv/