

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

CIVIL APPLICATION NO. 3609 OF 2018
IN
SECOND APPEAL STAMP NO. 41389 OF 2017

Ambadas Bhavrao Jadhav,
Through Lrs. Hausabai and Ors.

...Applicants

Versus

Shankar Mhatarji Jadhav,
Through Lrs. Karbhari and Ors.

...Respondents

Mr. A.R. Vaidya, Advocate for Appellants
Mr. R.M. Joshi, Advocate for Respondent Nos. 1A to 1F

CORAM : A.M. DHAVAL, J.
DATE: 7th DECEMBER, 2018

ORAL ORDER :

1. Heard learned Advocate Mr. A.R. Vaidya for the applicants and learned Advocate Mr. R.M. Joshi, for the respondents.
2. This is an application for condonation of delay for 356 days in preferring the second appeal.
3. The applicants are legal heir of one of the defendants from the trial court. The respondents had filed Regular Civil Suit No. 301/2007 against the applicant father and his three brothers. The said Suit No. 354/2003 for possession of encroached area of 4 gunthas was decreed on 17th November, 2017. The aggrieved defendant preferred Regular Civil Appeal No. 301/2007. The

appeal came to be dismissed as there are concurrent findings of the Court below about the factum of encroachment. This Judgment dated 03.01.2014 is under challenge. The application for certified copy was filed on 07.04.2017.

4. The case of the applicant is that he was not residing with his parents on account of his service and he was not aware of the litigation. His father died on 15.07.2014, and thereafter, he came to know about the litigation only when he received notice from executing court and thereafter, he has immediately taken steps and preferred the appeal along with this application for condonation of delay on 20.12.2007.

5. Learned Advocate for the applicant argued that substantial rights of the defendants are involved and there is a sufficient ground. The father of the applicant was not keeping good health, and therefore, the delay is explained. The respondents have not denied that father of the applicant was not keeping good health. The delay in such matter should be liberally construed.

6. Per contra, learned Advocate for the respondents argued that the delay is huge. He relies on **Lanka Venkateshwarlu Vs. State of A.P. 2011 (4) Mh L J 104**, wherein it is held the Court do not enjoy unlimited and unbridled discretionary powers and discretion has to be

exercised within reasonable bounds, known to law. Consideration of delay caused by inefficiency and ineptitude of the Government Pleaders would be improper.

7. Advocate Mr.Joshi argued that there were 4 brothers against whom the decree has been passed and they are residing jointly. There is absolutely no reason why the other three brothers did not file appeal in time.

8. The only point for my consideration is whether there is sufficient cause for condonation of delay ?

My finding to the above point is in negative.

REASONS

9. Admittedly, the first appeal has been decided on 03.01.2014 whereas the appellants father Ambadas who was one of the defendants has died on 15.07.2014. He had ample time for filing the appeal during his life time. Besides, there were brothers of Ambadas, who were defendants. They could have also preferred the appeal. The record shows that they did not even apply for certified copies. Ambadas was contesting the suit as well as the appeal for a period of 11 years and it is not acceptable that he would not have disclosed the pendency of such litigation against him to his family members. Besides, there

is no reliable medical evidence to show that from 3rd January, 2014 to 15th July, 2014 till the death of Ambadas, during the period of six months, he was prevented by ill health to file appeal against the Judgment and decree. The applicant and his three uncles could have also filed appeal within time. There is no proper explanation for the delay.

10. I rely on the following cases :

(i) ***Isha Bhattacharjee Vs. Managing Committee of Raghunathpur Nafar Academy and Ors. reported in [(2013) 12 SCC 649]***, the Apex Court took resume of the entire case law on the subject of condonation of delay and laid down guiding principles in paragraph 21 (1) to 21 (13) and 22 (1) to 22 (4).

(ii) As per ground no. 21.8 (viii), distinction should be made between inordinate delay and short delay. In case of inordinate delay, doctrine of prejudice is attracted and one warrants strict approach.

(iii) Some of the grounds relevant to the facts of the present case may be stated as follows :-

“21.1 (I) There should be a liberal. Pragmatic, justice-oriented, non-pedantic approach while dealing with an application for condonation of delay, for the courts are not supposed to legalise

injustice but are obliged to remove injustice.

21.2. (ii) The terms “sufficient cause” should be understood in their proper spirit, philosophy and purpose regard being had to the fact that these terms are basically elastic and are to be applied in proper perspective to the obtaining fact-situation.

21.3 (iii) Substantial justice being paramount and pivotal the technical consideration should not be given undue and uncalled for emphasis.

21.7 (vii) The concept of liberal approach has to encapsulate the conception of reasonableness and it cannot be allowed a totally unfettered free play.

21.8 (viii) There is a distinction between inordinate delay and a delay of short duration of few days, for to the former doctrine of prejudice is attracted whereas to the latter it may not be attracted. That apart, the first one warrants strict approach whereas the second calls for a liberal delineation.

21.9 (ix) The conduct, behaviour and attitude of a party relating to its inaction or negligence are relevant factors to be taken into consideration. It is so as the fundamental principle is that the courts are required to weigh the scale of balance of justice in respect of both parties and the said principle cannot be given a total go by in the name of liberal approach.

22.2 (b) An application for condonation of delay should not be dealt with in a routine manner on the base of individual philosophy which is basically subjective.

22.4 (d) The increasing tendency to perceived delay as a non-serious matter and, hence, lackadaisical propensity can be exhibited in a nonchalant manner requires to be curbed, of course, within legal parameters.”

11. In **Basawaraj v. Land Acquisition Officer, 2013 (14) SCC 81**, it is held -

“sufficient cause is a cause when a defendant could not be blamed for his absence. It means party should not have acted in negligent manner. Unless satisfactory explanation is furnished, Court should not allow the application for condonation of delay. The Court has to examine whether mistake is bona fide or was merely a device to cover an ulterior purpose.”

12. In **P.K. Ramchandra Vs. State of Kerala AIR 1998 SC 2276**, it is that - Law of limitation may harshly affect a particular party but it has to be applied with all its rigour when the statute so prescribe and the Courts have no power to extend the period of limitation on equitable grounds. The discretion exercised by the High Court was, thus, neither proper nor judicious. The order condoning the delay cannot be sustained.

13. In ***Kumar Vs. Kamata ICU Bank, 2013 (11) SCC 668***, it is laid down that bald statements with no reasons as to non-intimation cannot be sufficient cause. In this case, the High Court had condoned delay of 290 days and 785 days and though the said order was not directly challenged in appeal from the main order, the Apex Court held that the inordinate delay should not have been condoned.

14. In the present case, there is a huge delay of 356 days and there is no acceptable cause shown for the delay. As observed in ***Lanka Venkateshwarlu Vs. State of A.P. (supra)*** Such delay cannot be condoned on the principles of equity and only on the ground of doing justice to the parties. Existence of sufficient cause is sine qua non for grant of condonation of delay particularly when it is so huge. Considering the facts, as there is no sufficient cause, the application is dismissed.

(A.M. DHAVALÉ)
JUDGE

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