

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

**CIVIL APPLICATION NO.950 OF 2016
WITH
SECOND APPEAL (ST) NO.4046 OF 2016**

Mr. Shankar Chandan Sonawane & Anr.Applicants
V/s.
Mr. Pandurang Gulabchand Kathod
(Marwadi) & Anr.Respondents

Mr. Rushikesh Kale, i/by Mr. A.S. Rao for the Applicants.
Mr. Sandeep Salunkhe for Respondent No.1.

CORAM : M.S. SONAK, J.

DATE : 22nd FEBRUARY, 2018

P.C.

1. Heard Mr. Rishikesh Kale, learned counsel for the applicants and Mr. Sandeep Salunkhe for Respondent No.1.
2. This is a civil application which seeks condonation of delay of 4 years and 262 days in institution of the Second Appeal.
3. In the civil application, a bald statement is made that the advocate who was appearing for the applicants before the first Appellate Court did not bother to inform the applicants the outcome of the appeal, and therefore, the delay in institution of the appeal. There are allegations made against the advocate that he did not argue the matter before the Appellate Court, communicate the order

of the Appellate Court to the applicants, and thereafter, refused to assist them in the institution of the second appeal even after the certified copy of the impugned order was obtained on 26.11.2014. It is stated that the applicants are illiterate persons residing in villages and have no much knowledge about the litigations and the procedure to be followed in such litigations.

4. Mr. Kale, learned counsel for the applicants reiterated the same averments as have been set out in the civil application seeking condonation of delay.

5. Mr. Salunkhe, learned counsel for Respondent No.1 points out that the applicants were very much aware of the impugned judgment and order dated 22.12.2011. He adverted to the affidavit of reply on behalf of the respondents in which it is clearly stated that the impugned order dated 22.12.2011 was specifically produced in the litigation between the same parties i.e. in RTS/Revision Application/Solapur/541/1996. It is pointed out that the applicants have even made submissions on the basis of the said impugned judgment and order. A copy of judgment and order dated 21.08.2014 made by the Additional Commissioner in RTS/Revision Application/Solapur/541/1996 which reflects the position is produced on record. Besides this, Mr. Salunkhe submits that even

after receipt of certified copy on 26.11.2014, the appeal and application of condonation of delay was filed only on 08.02.2016 and there is absolutely no explanation for such inordinate delay. He therefore submits that this is the case where a deliberate false statement has been made to secure condonation and even otherwise, there is no sufficient cause shown to explain the delay.

6. On the perusal of material on record, it does appear that the applicants have approached this Court with a patently false case. Bald statements are made to the effect that the applicants were unaware of the impugned judgment and order because their lawyer failed to communicate the same to them. However, there is explicit material on record which indicates that the impugned judgment and order was produced before the Additional Commissioner in a litigation to which the applicants were a party and the applicants even made submissions on the basis of the impugned judgment and order. All this was prior to the year 2014 itself. This means that the applicants had full knowledge of not only the impugned judgment and order, but also its implications prior to the year 2014. Despite this, false statements have been made to place the blame on the advocate and thereafter to urge that the applicants, who are an illiterate villagers should not be penalized for the fault of their

advocate.

7. Even the allegations against the Advocates have been made in a very casual manner without even releasing the seriousness thereof. In any case, since patently false statements have been made, there is no question of exercise of discretion in favour of such applicants.

8. That apart, in the application itself, it is admitted that the certified copy of the impugned judgment and order was obtained by the applicants on 26.11.2014. However, the appeal and application for condonation of delay has been filed only on 08.02.2016 i.e. after almost 15 months. Again, there is absolutely no explanation in respect of this period in the application. A mere statement that there were financial constraints or lack of proper legal advise is not at all sufficient to explain such inordinate delay.

9. For the aforesaid reasons, the application seeking condonation of delay of 4 years and 262 days in the institution of the Second Appeal is rejected with costs of Rs.5,000/-. As a consequence, the appeal does not survive and the same is also rejected.

10. Accordingly, the civil application for interim relief also does not survive and the same is also rejected.

(M.S. SONAK, J.)