

Sarnobat

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

**CIVIL APPLICATION NO. 1449 OF 2015
IN
SECOND APPEAL (STAMP) NO. 20122 OF 2015**

Babu Dhondi Patil. ... Applicant.
Vs.
Shirishkumar Vitthalrao Vhatkar & Anr. ... Respondents.

Mr. Chetan G. Patil, for the Applicant.
Mr. Amol Dhumal, for the Respondents.

CORAM : A. M. DHAVALÉ, J.

DATE : 10th SEPTEMBER, 2018.

P. C. :

1. This an application for condonation of delay of 190 days in preferring second appeal against the order of refusal to condone the delay of Six years and 358 days filed in MCA No.115/2009 passed by Learned Ad-hoc District Judge, Kolhapur. The delay in that matter was for preferring appeal against the judgment and decree in Civil Suit No. 143/2000 dated 26th February, 2002.

2. As per the case of the applicant, the land of 22 Are from block No. 347 situated at Mouje Admapur, Taluka Bhudargad, District Kolhapur is the subject matter of the suit. It is belonging to the plaintiff. By registered lease deed dated 26th October, 1994, the said land was leased to the defendant for agricultural purposes. It is the case of plaintiff that on 28th October, 1994 the defendant executed another

un-registered agreement for converting user of land for non-agricultural purpose. The plaintiff had spent Rs.1,04,900/- for development of the land. He filed suit for perpetual injunction restraining the defendant from using for NA purpose and for recovery of compensation of Rs.1,04,900/-. The defendant filed written statement and contested the claim. Several issues were framed. At the time of evidence the defendant remained absent. The plaintiff's witnesses were not cross examined and the defendant did not lead any evidence. The suit came to be partly decreed on 26th March, 2002 to the extent of perpetual injunction only. The appellant herein challenged the said judgment and decree. Defendant No. 2 preferred 1st appeal on 20th March, 2009 along with MCA No. 115/2009 for condonation of delay. There was huge delay of 6 years and 358 days. Defendant No. 2 claims that he had given the work of looking after the matter to his brother who has not paid any attention. Meanwhile the defendant had sold the land to Rahul Desai on 1st July, 2003.

3. Learned Ad-hoc District Judge, Kolhapur declined to condone the huge delay. The Learned Ad-hoc DJ did not accept the ground of illiteracy and miscommunication with the advocate, sufficient to condone the delay. The application came to be rejected on 16th October, 2014. Again the appellant committed further delay of 190 days in preferring this appeal. It is brought to the notice that period of lease

of 25 years is also about to be over.

4. In ***Karan Kaur Vs. Jalandar Inv. Trust (2014) S.C.C. 409*** the Apex Court upheld the decision to refuse to condone huge delay of seven years on the ground of miscommunication and illiteracy.

5. The facts stated herein above disclose that the appellant is a habitual defaulter. He had committed delay at every stage. He did not contest the main suit. Thereafter there was huge delay of 7 years in filing 1st appeal and even in this proceeding there is delay of 190 days. It seems that the appellant is not believing in following the procedure of Civil Procedure Code and the prescribed time limits as per the limitation Act. The gross delay of 190 days is not satisfactorily explained. Even on merits I find that the Ld. Ad-hoc DJ has not committed any mistake in rejecting the application for condonation of delay of 7 years. No substantial question of law has arisen as, no evidence was ignored. The order was reasonable. In the circumstances, the delay of 190 days herein is also not satisfactorily explained. The applicant cannot commit his same mistake again and again and seek indulgence of the Court. Considering the facts the delay application deserves to be dismissed. Hence, the application is dismissed.

[A. M. DHAVAL, J.]