

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

WRIT PETITION NO. 1176 OF 2017

Laxman Nivrutti Savant & Anr.

...Petitioners

Versus

Krushna Dagadu Dhakale & Ors.

...Respondents

.....

Mr.Vaibhav Gaikwad for the Petitioners.

Mr.M.V.Utagikar for Respondent Nos. 1,3,4,5, 8 and 9.

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**CORAM: MRS.MRIDULA BHATKAR, J.
DATED: JULY 06, 2018**

P.C. :

1. Upon urgent mentioning, taken on Production Board.
2. This Petition invoking the Writ Jurisdiction of this Court under Article 227 of the Constitution of India is filed wherein the order dated 9th September, 2016 passed by the learned Ad-hoc District Judge-2, Pandharpur thereby allowing the application below exhibit 61 for condonation of delay of one year, one month and 11 days is challenged.
3. The petitioners, who are the original plaintiffs, have filed a Special Civil Suit No. 47 of 2007 for partition and declaration. In

the said suit, the respondents/ defendants did not file written statement. They did not remain present though they have engaged an Advocate. The said suit was decreed ex-parte on 23rd February, 2012. After receipt of the notices of the execution, the respondents/ defendants got knowledge about the order of ex-parte decree of the suit. The defendants have filed an Appeal with Application for condonation of delay of 407 days on the ground that the Advocate, who is engaged by them neither attended the Court dates nor communicated the dates and development of the suit. It was opposed by the petitioner, who is the respondent in the Appeal, before the District Court. After considering the reasons given by the respondents and the objections raised by the petitioner, the learned Judge of the Appellate Court allowed the said Application with payment of costs of Rs. 15,000/-.

4. The learned Counsel for the petitioners has submitted that the order passed by the learned Judge of the Appellate Court is erroneous. There is an inordinate delay of 407 days, which ought not to have been condoned. He has further submitted that the respondents have not given sufficient cause to condone the delay.

In support of his submission, he has relied on the judgment of this Court in the case of ***Vasant Vithal Gawand Vs. Shantaram Tukaram Gawand since (D) by his Lrs and Anr.*** reported in ***2016 (2) ALL MR 235***. He has further submitted that in the same trial Court, a Special Civil Suit No. 58 of 2008 has been filed and the respondents were parties in that suit. They used to appear in the said suit. Both the suits appeared on the file on the same date and yet the respondents did not attend Special Civil Suit No. 47 of 2007. Hence, he prays that the order dated 9th September, 2016 passed by the Appellate Court is to be set aside.

5. The learned Counsel for the respondents supported the order passed by the Appellate Court.

6. Heard submissions. Perused the impugned order. The only reason given by the respondents for not attending the suit is that non-communication from their Advocate about the Court dates and progress of the suit. It is a fact that after appearance in Special Civil Suit No. 47 of 2007, the respondents have engaged the Advocate, who appeared in the said suit. Whether the concern Advocate had appeared on each Court date or not is not before

this Court. If a party has engaged the Advocate, then it is the duty of the Advocate to attend all the Court dates and conduct the matter though his client is absent. The view taken by the Appellate Court that, the respondents were attending Special Civil Suit No. 58 of 2008 and on the same date, Special Civil Suit No. 47 of 2007 was also listed in other Court, which went unattended. This circumstance on the contrary supports the case of the respondents. I am of the view that if a person is attending one suit in the same court on the same date and if other suit is pending against him, then if at all he is having knowledge about the same, he will definitely attend other suit also. If a person is not having any knowledge about the date of the other suit, then he may not.

7. It is also to be noted that First Appeal is a statutory right of the party.

8. The facts in the case of **Vasant Vithal Gawand** (*supra*) are distinguishable than the case in hand.

9. It is informed by the learned Counsel for the respondents that the Appeal is numbered. After receipt of the notice, the

petitioners appeared in the said Appeal. Under such circumstances, no interference is required in the order dated 9th September, 2016 passed by the learned Ad-hoc District Judge-2, Pandharpur. Hence, I dispose of this Petition by modifying the impugned order :

ORDER

The respondents are directed to deposit additional amount of Rs. 5000/- in the District Court, Pandharpur within a period of one month from today.

(MRIDULA BHATKAR, J.)