

- 1 -

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

BENCH AT AURANGABAD

930 CIVIL APPLICATION NO.1691 OF 2019
IN SECOND APPEAL (ST) NO.1264/2019

RAJARAM NAGAPPA KAKNALE AND OTHERS
VERSUS
MEENAKSHI DHANRAJ BODKE AND ANOTHER

...

Advocate for Applicants : Shri P.R. Katneshwarkar h/f
Shri Dhanure Bramhanand M.

Advocate for Respondent nos.1 & 2 : Shri C.D. Biradar

CORAM: V.L. ACHLIYA, J.

DATE: 18.07.2019

PER COURT :

1] The applicants – appellants / original defendants have preferred this appeal with application seeking condonation of 207 days delay in filing appeal.

2] The reasons assigned for condonation of delay recorded in the application in paragraph nos.2 to 7 read as under:-

“2] The applicants submits that they had engaged an Advocate so as to conduct the regular civil appeal before the lower appellate court. The Id.appellate Court below is pleased to deliver the judgment on 23.03.2018. However, there is no communication at the instance of the

- 2 -

Ld.Advocate about the judgment and decree of the Ld.Lower Appellate Court.

3] The applicants submit except the applicant Nos.2/5 all other applicant are illiterate and uneducated having no knowledge about court proceedings. Some of the applicants are ladies. Moreover, the applicant no.1 being old aged cannot attend court proceeding at Udgir which is remote area from the village Jawalga having more than 30 km distance.

4] The applicants submit that the applicant No.2/5 time and again tried to contact the engaged Advocate personally as well as calling him on mobile, however, in vain. The applicants came to know the decision of the judgment and decree of the Ld.Appellate Court in the last week of the December when they received notice of measurement from the office of the TILR, Deoni whereby the TILR communicated that pursuant to order of Ld.Tahsildar Deoni the date for measurement is scheduled on 8th January, 2018 and then the applicant No. was at Udgir and enquired about the decision of the Ld.Lower Appellate Court and made an application for certified copy on 27.12.2018 and received on 01.01.2019 and, therefore, delay is caused in filing the appeal.

5] The applicants submit they got knowledge about the decision of the Ld.Appellate Court in the last week of the December. They received

- 3 -

the certified copy of the judgment and decree passed by the Ld.Appellate court and approached at Aurangabad that too after making preparation in respect of Advocate fee and other expenses for filing the appeal. Moreover, there are 8 applicants and, therefore, at the eleventh hour no financial arrangement can be made for filing expenses and advocate fee.

6] The applicants are very poor persons even having land they could not yield properly because of drought situation and untimely rainfall. Moreover, they are agriculturists having no knowledge of the court proceedings and having the only source of income from agricultural land, facing financial crisis or difficulties and no other source of income presently.

7] The applicants submits that, no one to assist the applicant economically; they were not able to approach the advocate and to file appeal instantly inasmuch as the engaged advocate did not communicate them about the decision and, therefore, due to negligency and recklessness at the instance of advocate, the applicant should not suffer. Furthermore, the substantial right in respect of immovable property is involved in the present appeal and, therefore, considering these facts and circumstances, delay caused in filing the present appeal needs to be condoned, in the interest of justice."

- 4 -

3] The respondent nos.1 & 2 have appeared in the matter and filed affidavit in reply. They have specifically denied the averments made in the application as to delay caused in filing appeal. The respondents have specifically denied that the applicants were unaware as to the decision given by the first appellate Court and the application for certified copy was filed after the notice received from TILR. The respondents have categorically stated in their affidavit that the applicants were fully aware of the decision rendered by the appellate Court. The judgment and order was passed on 23.3.2018. The application for certified copy was presented on 26.3.2018 with the signatures of Advocate for appellants and the applicant no.1. The certified copy was delivered on 11.5.2018. In support of the statement made in affidavit in reply, the respondents have annexed photo copy of the certified copy of the application made for certified copy of judgment and decree passed by first appellate Court and delivery report of certified copy issued to appellants. The respondents have taken a specific stand that the applicants have deliberately made false and misleading

- 5 -

statements to mislead this Court so as to seek condonation of delay. They have falsely made allegations that the Advocate for the appellants has not communicated the decision in the appeal. The specific contention of the respondents as made in paragraph nos.5 to 7 of the affidavit reads as under:-

"5] I most respectfully say and submit that in respect of para no.2 that the applicants making incorrect, misleading and false statements before the Hon'ble High Court in respect of the advocate engaged by applicants so as to conduct the Regular Civil Appeal 45/2015 before the lower appellate Court and there is no communication at the instance of the Ld.Advocate about the Judgment and Decree dated 23.03.2018 of the Ld.Lower Appellate Court. Actually, the advocate namely U.C. Mahajan engaged by appellants filed an application dated 26.03.2018 for Certified Copy of Judgment and Order dated 23.03.2018 in Regular Civil Appeal No.45 of 2015 and the same application dated 26.03.2018 signed by appellants Advocate namely U.C. Mahajan as well as present first applicant namely Rajaram. Therefore, the statement made in respect communication of Judgment and Order of Appellate Court by their advocate to the applicants itself is wrong statement and contrary to Certified Copy of application dated 26.03.2018 which was

- 6 -

filed by their advocate and applicant no.1 themselves. Hence, the plea of appellants in respect communication of Judgment and Order dated 23.03.2018 of Appellate Court by their advocate to the applicants itself is not sustainable in the eye of law. The copy of application dated 26.03.2018 for certified copy of Judgment and Order dated 23.03.2018 in R.C.A.No.45/2015 filed by Ld.Advocate U.C. Mahajan and Applicant NO.1 i.e. Rajaram is annexed herewith and marked as Exhibit "R-1".

6] I most respectfully say and submitted in respect of para no.3 that, the applicants made the false and incorrect statement before the Hon'ble High Court that the applicant no.1 is an old age and cannot attend the Court proceeding at Udgir and this statement is against the record available on record that the applicant no.1 i.e. Rajaram himself appear before the Court and filed the application dated 26.03.2018 with his advocate U.C. Mahajan and signed that application dated 26.03.2018 by his advocate and applicant no.1 himself. Also he made the wrong statement in respect age that the age of the applicant no.1 is only 57 years old and not a Senior Citizen. Therefore, such a other wrong statement is denied by the present respondents and not sustainable in the eye of law.

7] I most respectfully say and submit in respect of para no.4 that the applicants making

- 7 -

incorrect, misleading and false statements before the Hon'ble High Court in respect communication of Judgment and Order of Appellate Court, by their advocate to the applicants itself is wrong statement and contrary to Certified Copy of application dated 26.03.2018 which was filed by their advocate and applicant no.1 themselves before the appellate Court, Udgir. The present applicants further made absolutely wrong and misleading and incorrect statement in respect of they know about the decision of Ld.Appellate Court in the last week of the December when they received notice of measurement from the office of the TILR, Deoni whereby the TILR communicated that pursuant to order of Ld.Tahsildar Deoni the date of measurement is scheduled on 8th January, 2018. Actually, the applicants known about the decision of appellate Court on 26.03.2018 and the Certified Copy of the Judgment and Order dated 23.03.2018 in R.C.A.No.45/2015 delivered to the applicants on 11.05.2018. Therefore, the Statement in respect of the applicants made inquiry about the decision dated 23.03.2018 of appellate Court and they made an application for certified copy on 27.12.2018 and received on 01.01.2019 and delay is caused in filing the appeal is itself contrary to the record available to the present respondents the same record is filed on record before the Hon'ble

- 8 -

High Court and the record shows that the Knowledge of Decision of appellate Court to the applicant on 23.03.2018. That the attendance of applicant no.1 on 26.03.2018 and signed the application for certified copy shows that the applicants had knowledge of date of order dated 23.03.2018 of appellate Court. Therefore the plea of late knowledge and receiving of notice of TILR is not tenable. In such situation and suppression of material fact on record the delay should not be condoned. Applicants filed affidavit in support of ground for condonation of delay itself is false ground and this is sufficient to refuse the delay application."

4] The applicants have filed affidavit in rejoinder and denied the allegations that the application for certified copy was presented on 26.3.2019 with the signatures of Advocate representing the applicants and the applicant no.1. It is specifically pleaded that they were not informed by the Advocate about the decision in appeal nor they made application for certified copy as stated by the respondents in their affidavit in reply.

5] In view of the allegations made by the respondent nos.1 & 2 supported with photo copy of the application made with the signatures of Advocate

- 9 -

representing the appellants and the applicant no.1 seeking certified copy filed before the appellate Court on 26.3.2018, it is desirable that before deciding the application and taking any action in the matter, the factual aspects be ascertained from the Advocate representing the appellants before the appellate Court. Hence, I pass the following order:-

O R D E R

A] Issue notice to Shri U.C. Mahajan Advocate practising at Udgir with copy of application filed for condonation of delay, copy of affidavit in reply filed by respondent nos.1 & 2 alongwith supporting documents and copy of rejoinder affidavit filed by applicants.

B] Notice be served to Shri U.C. Mahajan Advocate through the office of Civil Judge, Senior Division, Udgir Dist.Latur.

C] Shri U.C. Mahajan Advocate is directed to submit his response in the form of affidavit as to allegations made in the application for condonation of delay as to non-communication of judgment and decree as well as application for

- 10 -

certified copy filed on 26.3.2018 in RCA
No.45/2015.

D] S.O. to 01.8.2019.

(V.L. ACHLIYA, J.)