

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

Civil Application No. 03152 of 2019
(In Second Appeal Stamp No. 01336/2019)

District : Latur

Kalubai w/o. Shrirang Lamture,
Age 64 years,
Occupation : Agriculture &
Household,
R/o. Panchshil Nagar, Janwal,
Taluka Chakur, Dist. Latur.

.. Applicant/
Appellant
(Original
plaintiff)

versus

1. Nanuram s/o. Kanhayallal
Varma (Sonar),
Age : 44 years,
Occupation : Business &
Agriculture.

2. Omprakash s/o. Kanhyallal
Varma,
Age : 39 years,
Occupation : Business &
Agriculture.

3. Ratanlal s/o. Kanhayallal
Varma,
Age : 36 years,
Occupation : Business &
Agriculture.

All r/o. Janwal,
Taluka Chakur, Dist. Latur.

.. Non-applicants/
Respondents
(Original
defendants)

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Ms. Sharda P. Chate, Advocate, for the applicant.

*Mr. K.T. Jamdar, Advocate, for non-applicant no.01
(caveator).*

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CORAM : SMT. VIBHA KANKANWADI, J.

DATE : 27TH FEBRUARY 2019

ORAL ORDER :

Heard learned Advocate Ms. S.P. Chate for the applicant and learned Advocate Mr. K.T. Jamdar for respondent no.01 - caveator.

02. By this application, the applicant prays for condonation of delay of 445 days in preferring second appeal.

03. The present applicant is the original plaintiff. She had filed Regular Civil Suit No. 117 of 2014 before Joint Civil Judge (Junior Division), Chakur, District Latur, for perpetual injunction. The said suit came to be dismissed on 06-09-2018. Thereafter, she filed appeal with application for condonation of delay before learned Principal District Judge, Latur, bearing Misc. Application No. 170 of 2016. There was delay of one year i.e. almost twelve months in preferring the first appeal. After hearing both sides, learned Principal District Judge, Latur, rejected that application on 28-07-2017. Now, the applicant intends to challenge the said decision in this second appeal. However, there is delay of 445 days in preferring the second appeal.

04. The applicant has contended that she was

suffering from eye problem and was bed ridden for about one and half year due to the reason that she underwent eye operation, so also, she is suffering from diseases due to her old age. She was unable to move from one place to another from 04-04-2016 till 07-01-2019. She says that the delay is unintentional and not deliberate. If the delay is not condoned, she would suffer irreparable loss.

05. The application has been objected on the ground that the applicant had preferred the first appeal also after delay and now also, there is delay. The delay of each and every day has not been explained.

06. It will not be out of place to mention, in order to cut short, that both the learned Advocates have made submissions supporting their respective contentions.

07. It is to be noted that when there was delay of about 12 months in preferring the first appeal, present applicant had contended that due to her illness, illiteracy and operation of the eye, she could not approach the first appellate court in time. Now, for the delay in preferring second appeal also, same reasons have been given. The documents which are attached would show that she has undergone cataract surgery on 05-04-2016. Even if for the sake

of arguments it is accepted that she was hospitalized for that operation, yet it was somewhere in April 2016. The decision of rejection of the delay condonation by the learned Principal District Judge was on 28-08-2017. Therefore, she was required to give reason for the delay which has been caused subsequent to that date. As regards other documents on record are concerned, there is medical certificate dated 08-01-2019 which appears to be suggesting her to take rest for 08 days due to Osteoarthritis Osteoporosis. Further, another medical certificate dated 17-11-2018 says that she was advised rest due to joint pain with swelling, that too, suggesting her to take rest for 08 days only. Except these documents suggesting her rest for 07 days' period from the date of issue of those medical certificates, there is nothing on record.

08. It is to be noted that in her suit, she says that she is cultivating the land personally. If she can do those activities of looking after the field, then on the basis of the medical certificates, it cannot be stated that the delay of 445 days has been satisfactorily explained. No doubt, she is an illiterate lady, but at the same time, it cannot be forgotten that she is looking after the field and cultivating the land personally. Here, the conduct of the applicant is also required to be considered. In the past also, before approaching the first

appellate court, she has caused delay and again approaching this Court, there is a considerable delay. She has not come with a case that she was not aware about the decision of the first appellate court immediately. When she knew that her application for condonation of delay has been rejected, she should have immediately approached this Court within prescribed period of limitation. She has tried to give reason which was for very much earlier period and there is only explanation of about 15 days, in a whole, regarding her illness. Under such circumstance, no reasonable ground has been shown to condone the delay, much less, sufficient.

09. In the result, the application is hereby rejected.

(Smt. Vibha Kankanwadi)
JUDGE

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