

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

918 CIVIL APPLICATION NO.4332 OF 2017
IN SAST/5904/2017

SHANKAR NAGOJIRAO PATIL

VERSUS

VICE CHAIRMAN, MAHARASHTRA STATE ROAD
CORPORATION MUMBAI AND ANR

...
Advocate for Applicant : Mr. Ippar Pawan K.

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CORAM : SMT.VIBHA KANKANWADI, J.
DATE : 07-02-2019.

ORAL ORDER :

1. Heard learned advocate appearing for the applicant. Applicant is the original plaintiff who had filed Regular Civil Suit No.231 of 1990 before Civil Judge, Junior Division, Degloor Dist. Nanded for declaration of ownership and recovery of possession. The said suit came to be decreed on 29-11-2007. Thereafter the original defendants preferred Regular Civil Appeal No.02 of 2008 before District Judge -1, Biloli Dist. Nanded. The said appeal came to be allowed and the decree passed by the trial Court was set aside on 01-08-2013. Now the appellant – original plaintiff intends to challenge the said Judgment and decree passed by the learned First Appellate Court. However, there is delay of 1194 days in preferring second appeal. The

applicant – appellant has contended that, he had engaged advocate Mr. Babhulgaonkar for filing second appeal. He had handed over all the papers and Vakalatnama to Mr. Babhulgaonkar and make enquiry regarding progress of the matter. According to him he was not getting any concrete and specific information about the progress regarding the second appeal. Therefore, he decided to meet his advocate personally, and therefore, came to Aurangabad on 12-02-2017. He was asked to note that, Advocate Mr. Babhulgaonkar is not alive. Under that circumstance he contacted the present advocate and after taking search he got the knowledge that his second appeal was not at all filed. It is stated that, the delay is not deliberate or intentional. The said delay was beyond the control of the applicant, and therefore, he has prayed to condone the same.

2. Respondents i.e. Non-applicants are served but nobody is appearing on their behalf.

3. Heard learned advocate appearing for the applicant who made submissions in support of the application.

4. It will not be out of place to mention here that, on the last occasion also when the matter was on board and it was heard for

some time, when the question was asked as to when Mr. Babhulgaonkar expired, learned advocate for the applicant made submission that he went to produce certain documents on record and therefore the matter was adjourned. However till today no document has been produced by the applicant. However, early the learned advocate appearing for the applicant submits that, advocate Mr. Babhulgaonkar expired on 26-12-2016. Taking this fact into consideration it is to be now seen that, according to the applicant he had handed over his documents to advocate Mr. Babhulgaonkar in 2013. Perusal of the certified copies would also show that, certified copies of the Judgment and decree of the First Appellate Court was received by the applicant on 30th August, 2013. Naturally those documents would have been handed over by him after 30th August 2013 to Mr. Babhulgaonkar. If that statement of the applicant is to be believed, in fact except his statement that he had engaged Mr. Babhulgaonkar and had handed over documents to him, there is nothing on record. Even if that fact is liberally construed and taken that he had handed over the documents within reasonable period after 30th August 2013 to Mr. Babhulgaonkar yet according to him he had decided to met his advocate personally only on 12-02-2017. He says that, he used to contact his advocate in the meantime and

make enquiry regarding progress, but except bare words there is nothing on record. Details have not been given as to how he used to contact his advocate, that means, whether telephonically or by writing letters. If it was by writing letters then he ought to have produce on record his copies.

5. Further it is to be noted that, when he had handed over the documents to Mr. Babhulgaonkar in 2013 a note can be taken regarding the fact that an understanding would have been given by Mr. Babhulgaonkar as to when he would file the second appeal. Applicant is not claiming any ignorance as regards the limitation of the second appeal to be filed. Under such circumstance it is hard to believe that he went on only contacting Mr. Babhulgaonkar without taking any concrete step including meeting him personally for a period of 3 ½ years. Vague statements are made that, Mr. Babhulgaonkar used to give him information regarding progress in the matter. If the second appeal was not at all filed where was the question of any progress. Applicant has not come with a case that, he has not enquired with Mr. Babhulgaonkar as to what is the number of his second appeal.

6. Under such circumstance by making some omnibus statement that he used to contact Advocate it cannot be said to be the act of diligent litigant. It appears that, his silence for about 3 ½ years in between is the act of his negligent and carelessness in filing appeal. Under such circumstance liberal approach cannot be taken to condone such a huge inordinate delay. Hence, the application is rejected.

(SMT. VIBHA KANKANWADI)
JUDGE

vjg/-.