

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

Civil Application No. 08898 of 2018
(In Second Appeal Stamp No. 12623/2018)

District : Ahmednagar

Ahmednagar Zilla Vidya Prasarak
Samaj, Registered Public Trust
On behalf of the Trust
and Trustees :

1. Vilasrao Balaji Athare
(deceased).
2. Shri Ramnath Laxmanrao Wagh,
Age 69 years,
Occupation Agriculture.
3. Shri Genuji Dagduji Khandeshe,
Age 73 years,
Occupation Agriculture.
4. Shri Ramchandra Haribhau Dare,
Age 66 years,
Occupation Agriculture.
5. Shri Nandkumar Bhausahab
Zaware,
Age 59 years,
Occupation Agriculture.
6. Shri Mohanrao Gangaram Hapse,
Age 63 years,
Occupation Agriculture.
7. Shri Madhavrao Dagaduji Mule,
Age 76 years,
Occupation Agriculture.
8. Sau. Deeplaxmi Sambhajirao
Mhase,
Age 59 years,
Occupation Legal Practitioner.

All R/o. C/o. Ahmednagar,
Zilla Maratha Vidya Prasarak
Samaj, Residential High School,
Ahmednagar, District Ahmednagar.

.. Applicants.

versus

1. Rameshwar Shriram Dhoot,
Age 46 years,
Occupation Business.
2. Shriram Radhakisan Dhoot,
Age 74 years,
Occupation Business.

.. Respondents.

Both R/o. Shevgaon,
Taluka Shevgaon,
District Ahmednagar.

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Mr. Ashwin V. Hon, Advocate, for the applicants.

Mr. Sharad V. Natu, Advocate, for the respondents.

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CORAM : SMT. VIBHA KANKANWADI, J.

**Date of reserving
the order : 18th January 2019**

**Date of pronouncing
the order : 15th February 2019**

ORDER :

01. Present application has been filed for getting the delay of 667 days caused in filing the second appeal.

02. The applicants are the original defendants

and present respondents are the original plaintiffs. Plaintiffs had filed Special Civil Suit No. 173 of 2008 before Joint Civil Judge (Senior Division), Ahmednagar, for possession of encroached premises. The said suit came to be decreed on 08-10-2010. Present applicants preferred Regular Civil Appeal No. 386 of 2010 before learned Principal District Judge, Ahmednagar. After hearing both sides, the said appeal came to be dismissed on 09-03-2016. The applicants intend to challenge the said judgment and decree in second appeal. However, there is delay of 667 days.

03. The applicants contend that they are the trustees of registered trust, by name, Ahmednagar Zilla Vidya Prasarak Samaj. It was contended by the plaintiffs in the Special Civil Suit, that the Trust has made encroachment to the extent of 03 R. In the written statement, the defendants i.e. present applicants had challenged jurisdiction of the court, lack of permission from Charity Commissioner to file suit against Trust as per provisions of the Maharashtra Public Trusts Act, 1950 and non-inclusion of all the trustees. It is contended that without framing proper issues and without appreciating the evidence properly, the suit was mechanically decreed. Thereafter, learned

Principal District Judge, Ahmednagar, did not consider the legal and factual aspects involved and, therefore, they want to challenge the said judgment and decrees. As regards the delay is concerned, it is stated by the applicants, that after passing of the impugned judgment and decree by the learned Principal District Judge, Ahmednagar, there were settlement talks for about two years. However, for some or other reasons, those talks could not materialize and, therefore, they had no alternative but to challenge the said judgment and decree. It is also contended that the delay is not deliberate or intentional and hence prayer for condonation of delay has been made.

04. Respondents no.01 and 02 have filed their affidavit in reply and denied the fact that there were compromise talks. It is stated, that the applicant - Trust was served with notice of execution proceedings on 10-11-2017 and, therefore, there is no substance in the say that there were settlement talks going on.

05. Heard learned Advocate Mr. A.V. Hon appearing for the applicants and learned Advocate Mr. S.V. Natu appearing for respondents no.01 and 02. In order to cut short, it can be said that both of them have argued in support of their respective

contentions. Apart from that, learned Advocate for the respondents has relied upon the decision of the Hon'ble Apex Court in *P.K. Ramachandran Vs. State of Kerala* [AIR 1998 SC 2276], wherein it has been held that *"Where no explanation was offered by the State for filing appeal after expiry of limitation period, condonation of delay was not sustainable. The High Court did not examine the reply filed by the appellant as reference to the same was conspicuous by its absence from the order."* In that case, delay of 565 days, though condoned by the High Court, the said order was set aside by the Hon'ble Apex Court.

06. It is to be noted that the decree was passed on 08-10-2010 by the learned trial Court. Thereafter, within limitation, the said judgment and decree was challenged before learned Principal District Judge, Ahmednagar, in Regular Civil Appeal No. 386 of 2010. The appeal was dismissed on 09-03-2016. The applicants are not coming with a case, that they were not aware about decision of the appeal. They are coming with a case, that there were settlement talks going on for about two years. Only vague and omnibus statements are made to that effect and details have not been given. If such statements which are made in paragraph 07 in the application are accepted without any further details, then it would be very much easy for any party to make vague statements because it further

says, that for some or other reason (without giving further details), the talks could not materialize. Any supporting affidavit of the person who had taken part in the settlement talks has not been filed.

07. Another fact that is also required to be considered is, that the execution proceedings were filed before Civil Judge (Senior Division), Ahmednagar, in Misc. Application No. 208 of 2016. Notice about the same was issued to the present applicants. They were represented by Advocate. An adjournment application was given on 05-12-2017. However, till 06-03-2018, Vakalatnama was not filed nor any say was filed and, therefore, that application proceeded in absence of the present applicants. It appears that by the said application, the decree was transferred to Civil Judge (Junior Division), Shevgaon, for execution by order dated 20-04-2018. That means, prior to 05-12-2017, present applicants had the knowledge about filing of execution proceedings. Yet, till 21-08-2018, no appeal was tried to be filed. After execution of proceedings, it is hard to believe that the parties would have been still negotiating with each other. Further, in fact, there was no hurdle to file appeal and then keep on negotiating the terms of settlement. That cannot be taken as a

reasonable ground, much less, sufficient to condone the inordinate delay of 667 days. Under such circumstance, no case is made out to condone the delay.

08. Hence, the following order :-

The civil application is hereby rejected.

(Smt. Vibha Kankanwadi)
JUDGE

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