

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

CIVIL REVISION APPLICATION NO.72 OF 2016

Rukhmeshchandra s/o Hemchand Mishra,
Age: 73 Years, Occu: Business,
R/o: Plot No.1, Raj Nagar,
Bansilal Nagar, Aurangabad. ...Petitioner

Versus

1. Kesarbai w/o Indalsing Dangar,
Age: 51 years, Occu: Agriculture,
R/o: Malodyachi Wadi, Taluka Phulambri,
District Aurangabad.
2. Sukhmanbai w/o Bhaulal Lalsote,
Age: 49 years, Occu: Agriculture,
R/o: Malodyachi Wadi, Taluka Phulambri,
District Aurangabad. (Org.Applicants)
3. Supdabai w/o Kapurchand Rajalwad,
Age: 56 years, Occu: Agriculture,
R/o: Golwadi, District Aurangabad.
4. The Tahsildar (Phulambri), Tahsil Office,
Phulambri, Taluka Phulambri,
District Aurangabad.
5. The Collector, Collector Office,
Collectorate Building,
Aurangabad.
6. Zumberbai Jaising Dangar,
Age: 61 years, Occu: Agriculture,
R/o. Golwadi,
Dist. Aurangabad. ...Respondents

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Mr. Ajit D. Kasliwal, Advocate for Petitioner.
Mr. Amol S. Gandhi, Advocate for Respondent Nos.1 & 2.

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**CORAM : P.R. BORA, J.
DATED : 02nd JULY, 2019.**

ORAL JUDGMENT:-

. The order dated 22.03.2016 passed by the District Judge-10, Aurangabad in MARJI No.441 of 2012 is challenged in the present application. The aforesaid MARJI was filed by present respondent nos.1 and 2 for condonation of delay, which has occurred in filing the appeal by them against the order dated 16.06.2008 passed below Exhibit-1 in Regular Civil Suit No.1000 of 2004 by 4th Joint Civil Judge, Senior Division, Aurangabad whereby, the suit filed by respondent nos.1 and 2 was rejected under Order VII Rule 11(c) of the Civil Procedure Code. The delay which had occurred in filing the appeal against the said order was stated to be of four years and two months. The same has been condoned and the said order is challenged in the present civil revision application.

2. Shri Kasliwal, the learned counsel appearing for the revision petitioner assailed the impugned order mainly on the ground that without there being any sufficient cause and without there being any sufficient evidence substantiating the reason as was assigned for occurrence of delay, the learned District Judge has condoned the huge delay of more than four years. The learned counsel submitted that when from the tenor of the application it

can be gathered that the entire blame was put by present respondent nos.1 and 2 on their advocate, who was representing them in the civil suit, it was necessary for the said respondents to substantiate the allegations made by them against the said advocate by stepping into the witness box and by adducing their oral evidence. The learned counsel submitted that it was specifically stated by the present applicants in their say filed to the delay condonation application that the allegations as are made by respondent nos.1 and 2 in their application against the advocate were false and were only with the intention to anyhow give some justification for occurrence of huge delay. The learned counsel submitted that in view of the plea so raised by the present petitioner, it was incumbent on part of respondent nos.1 and 2 to prove the said facts by adducing their evidence before the Court. The learned counsel submitted that the Trial Court has manifestly erred in observing that no oral evidence was necessary in the matter. The learned counsel further submitted that if the only cause which has been given in justification of the delay caused ultimately is proved to be untenable or false, the delay would not be liable to be condoned. The learned counsel submitted that in such circumstances, the observations as are made by the

Trial Court are unsustainable. The learned counsel submitted that since, huge delay has been condoned without there being any sufficient reason, the impugned order needs to be set aside.

3. Shri Amol Gandhi, the learned counsel appearing for respondent nos.1 and 2 supported the impugned order. The learned counsel submitted that the learned District Judge after having considered the pleadings of the parties has condoned the delay by assigning sound reasons therefor. The learned counsel submitted that a possible view when is taken by the District Court, no interference is required to be caused at the hands of this Court in the order so passed by the District Court. The learned counsel further submitted that the reasons which were assigned by respondent nos.1 and 2 were verified on oath by them and in such circumstances, the observations made by the Trial Court that no oral evidence was required cannot be faulted with. The learned counsel further submitted that if this may be the only objection raised on behalf of the present petitioner that no evidence was adduced, respondent nos.1 and 2 are ready to adduce their evidence before the District Court to substantiate the pleadings so raised by them in their application.

4. I have given due consideration to the submissions made by the learned counsel appearing for the respective parties. I have perused the impugned order as well as other material placed on record. The copy of the application which was preferred by respondent nos.1 and 2 before the District Court seeking condonation of delay is also filed on record. As I noted here-in-above, the impugned order is mainly assailed by the revision petitioner on the ground that the huge delay of more than four years has been condoned by the Court without there being any substantial evidence before it. It is also the allegation that a false blame was put on the counsel who was appearing for the respondents and in such circumstances, according to the petitioner, the oral evidence was must in the the matter. It has also been argued that the Trial Court has wrongly observed that no oral evidence was necessary in the matter.

5. Considering the averments in the application for condonation of delay, it is evident that the main reason which has been assigned by the applicants is non-communication by their advocate about the events which were occurring. In the circumstances, it appears to me that it was necessary for the applicants to enter into the witness box and depose the said facts on oath more particularly

when the specific objection was raised in that regard in the say filed by the respondents. In view of the fact that now the applicants themselves have alternatively submitted that they are ready to lead the evidence before the Trial Court, I deem it appropriate to dispose of the present civil revision application with the following order:

ORDER

- i) The order dated 22.03.2016 impugned in the present application is set aside.
- ii) The matter is remitted to the District Court, Aurangabad with a direction to permit the applicants in MARJI No.441 of 2012 to adduce necessary oral evidence, in order to substantiate their contentions in the petition.
- iii) Needless to state that the respondents in MARJI would have equal opportunity to rebut the contention raised in the application and if required to adduce necessary evidence in support of their contentions.
- iv) The civil revision application stands disposed of in the aforesaid terms.

(P.R. BORA, J.)