

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

938 SECOND APPEAL NO.707 OF 2018
WITH
CA/10418/2018 IN SA/707/2018

1. Vitthal Rangnath Lad,
Age 63 years, Occupation Agri.,
2. Sau. Babanbai Vitthal Lad,
Age 58 years, Occupation Agri.,
R/o Warkhed Tq. Newasa
Dist. Ahmednagar. ...Appellants.

VERSUS

Smt. Shakuntala Sunil Lad,
Age 38 years, occupation Household,
R/o Warkhed Tq. Newasa
Dist. Ahmednagar. ...Respondent.

...
Advocate for Appellants : Mr. Bhandari Anand P.
Advocate (Appointed) for Respondent : Mr. Patunkar G.B.
...

CORAM : SMT.VIBHA KANKANWADI, J.
DATE : 01-03-2019.

ORAL ORDER :

1. Present second appeal has been filed by original defendants. Present respondent had filed suit for declaration with consequential relief of injunction against the present appellants that is Regular Civil Suit No.335 of 2002. It was contested by the present applicants original defendants. After hearing both the sides and perusing the

evidence adduced by them, the said suit came to be decreed on 06-03-2008. The original defendants intended to challenge the said Judgment and decree, and therefore, approached District Court, Newasa Dist. Ahmednagar. However, since there was a delay, they had filed Misc. Civil Application No.13 of 2017 along with the appeal. In the said application it was stated that, the delay is of nine years and 65 days. It was stated that, the applicant No.1 was suffering from paralysis and could not prefer the appeal within the prescribed period of limitation. It was also contended that, the applicants are illiterate.

2. The said application was objected by filing say. It was stated that, after the decree was passed, the original plaintiff had filed execution proceedings bearing Regular Darkhast No.28 of 2008. Notices were served to the applicants. They had appeared and engaged advocate and between 2008 to 2010 they had contested the darkhast proceeding. They had the knowledge about the impugned Judgment and decree, under such circumstance whatever reason has been given for condoning the delay, is not sufficient and reasonable.

3. After hearing both the parties, the learned District Judge-1,

Newasa has rejected the said application on 19-06-2018. Now the applicants intend to challenge the said Judgment and decree in this second appeal.

4. Heard both the sides and perused the documents on record. In order to cut short it can be said that, both the learned advocates have made submissions in support of their respective contentions.

5. It has been tried to be submitted on behalf of the appellants that, substantial questions of law are arising. When it was shown that, the appellant No.1 was suffering due to paralysis, the Court ought to have taken liberal approach. The set of principles of law were not considered by the First Appellate Court, and therefore, that itself is a substantial question of law.

6. Per contra, it was submitted that, there was huge and inordinate delay which was not explained at all. So also the appellants had contested the execution proceedings but did not prefer to file second appeal. It shows that, they were negligent and therefore the delay that was caused by them is intentional.

7. There is no doubt that the delay of 09 years and 65 days is a huge delay. How it is explained was required to be considered.

There were two applicants before the First Appellate Court also. The applicant No.1 was said to have been in disposed of due to paralysis but there was another applicant who can be said to be his wife. As regards wife is concerned, there is no specific reason that was given as to why she could not take a lead and prefer the appeal within time or by minimizing the delay. Another fact that was rightly take a note was, that the present appellants had contested the execution proceedings for a considerable time that is between 2008 to 2010. The medical certificate on which the appellants were relying showed that, appellant No.1 was discharged on 17-05-2010, however thereafter application for certified copy was filed on 03-05-2017. There is no specific reason assigned for this kind of delay. Under such circumstance taking the facts from any angle, the appellants had not proved that there was sufficient and reasonable ground for them. The First Appellate Court has therefore taken a correct view. No substantial question of law arises and therefore the second appeal is **not admitted**. Second appeal is disposed of accordingly. Civil Application No.10418 of 2018 also stands disposed of.

(SMT. VIBHA KANKANWADI)
JUDGE

vjg/-.