

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

931 CIVIL APPLICATION NO.8112 OF 2019
IN SAST/18798/2019

VISHNU BALIRAM TIDKE AND ANOTHER
VERSUS
BALIRAM SAHEBRAO TIDKE

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Mr.V.P. Sawant, Advocate for the applicants.
Mr.R.D. Thorat, Advocate for respondent.

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CORAM: V.L. ACHLIYA,J.
DATE : 11.10.2019

ORAL ORDER:

This application is filed seeking condonation of 427 days delay in filing the appeal for the reasons set out in detail in the application.

2. Heard learned counsel for the applicants and learned counsel for the respondent.

3. In brief, it is the contention of learned counsel for the applicants that the delay caused in filing appeal was not deliberate and intentional. It is submitted that the applicants/appellants are fighting litigation against their father. The suit was instituted through their grand-father. When

the suit as well as appeal were decided, the applicants were minor. They are residing with their grand-father at Sonimoha. On attaining the age of majority and arranging the funds for filing the appeal, they have presented the appeal. In the process there is delay of 427 days in filing the appeal. It is submitted that the applicants have good case to succeed in appeal. In case the delay is not condoned, there is every likelihood that the meritorious matter may be rejected for technical reason. The judgment passed by the Appellate Court is *ex parte* judgment. The First appellate Court has reversed the decree.

4. On the other hand learned counsel for the respondent opposed the application with contention that the cause assigned for condonation of delay cannot be treated as a sufficient cause within the meaning of Section 5 of the Limitation Act. It is submitted that the applicants were represented throughout the proceedings through their grand-father. In that view, the contention of the applicants that they are filing the appeal after attaining the age of majority cannot be accepted as a cause for

condonation of delay.

5. On due consideration of submissions advanced in the light of unchallenged and uncontroverted pleadings made in the application assigning reasons for condonation of delay, I am of the view that the delay deserves to be condoned. The fact is not in dispute that the suit was brought in the name of applicants seeking partition and separate possession through their grand-father. The fact is also not in dispute that the applicants are fighting litigation against none-else than their father. It appears from the record that the applicants are coming from village background. The litigation on their part was prosecuted by their old aged grand-father. Age of the applicants are shown as 19 and 20 years. The trial Court has decreed the suit in their favour. The appellate Court has set aside the judgment and decree passed by the trial Court. The appellate Court proceeded *ex parte* against the applicants. According to them, no notice was served upon the applicants. In this background, the delay deserves to be condoned. If the delay is condoned, no serious prejudice would cause to the

respondent as ultimately the fate of appeal will be decided on its own merits. It is quite settled position in law that while dealing with the applications seeking condonation of delay, the Court has to adopt liberal and pragmatic approach. So also approach of the Court is expected to be justice oriented. Hence, I am inclined to allow the application and condone the delay. Accordingly, the application is allowed in terms of prayer clause "A". Delay condoned. Appeal be registered and subject to removal of office objections place for admission on 20th November, 2019.

6. Mr.R.D. Thorat, learned counsel waives notice of appeal for the respondent.

7. Interim order passed on 19.07.2019 granting stay to effect and operation of the impugned judgment and decree to remain in operation till further orders.

[V.L. ACHLIYA]
JUDGE

SGA