

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

924 CIVIL APPLICATION NO.10691 OF 2018
IN SAST/20726/2018

Narayan Sakharam Lokhande,
Dead through L.Rs.
And Others 1a to 1c, 2, 2a to 2c, 3, 4
4a to 4f, 5, 5a to 5g, 6, 6a, 6b, 7
and 8. ...Applicants.

VERSUS

Abarao Raising Lokhande,
Dead thorough L.Rs.
And Others 1a, 2, 2a and 3. ...Respondents.

...
Advocate for Applicants : Mr. Shelke Shivaji T.
Advocate for Respondents No. 1a, 2a, 3: Mr. A. R. Joshi holding for
Mr. Deshmukh Rajendra S.
...

CORAM : SMT.VIBHA KANKANWADI, J.

DATE : 04-01-2019.

ORAL ORDER :

1. Present application has been filed for condonation of delay in preferring second appeal. The applicants were the original respondents in Regular Civil Appeal No. 174 of 2013 which came to be decided on 01-08-2017 by learned Adhoc District Judge - 2, Aurangabad. The present applicants had filed Regular Civil Suit No. 914 of 1989 for injunction against present respondents. Thereafter by way of amendment they had prayed for demolition of the allegedly illegally constructed room. However, the said room came to be demolished by

the Municipal Council on 12-06-1989, and therefore, the suit was not contested and it came to be dismissed in default. However, the said suit a present respondents had filed counter claim. The said counter claim proceeded and it came to be dismissed on merits by learned 23rd Joint Civil Judge, Junior Division, Aurangabad on 16-07-2013. Being aggrieved by the dismissal of the counter claim, the present respondents had approached the First Appellate Court in said Regular Civil Appeal No.174 of 2013 which came to be partly decreed. The present appellants / applicants have been permanently restrained from causing obstruction to the peaceful possession of the present respondents till the recovery of possession of the suit property by following due procedure of law. Now the applicants intend to challenge the said Judgment and decree passed by the First Appellate Court. However, there is delay of about 261 days.

2. The applicants have contended that, the said delay has been caused because the heirs and legal representatives of the original parties i.e. the then original plaintiffs are residing at different places and it require time for them to come together, discuss and make arrangements to file the appeal. They are the owners and possessors of the suit property. They have the substantial right in the suit property. The delay that has been caused in filing second appeal is not willful and deliberate. They have good grounds to succeed and on these grounds they have prayed for condoning the said delay.

3. Affidavit-in-reply has been filed on behalf of respondents No. 1-A, 2-A and 3 opposing the application. It has been contended that, the reasons given for condoning the delay is not at all reasonable and satisfactory. The present application has been filed with malafied intention. It is also stated that, the son and daughter-in-law of applicant No.1-C and real nephew of applicant No.1-A are practicing advocates and they could have guided the applicants in filing the appeal within time. The respondents have therefore prayed for rejection of the application.

4. Heard learned advocate for Applicants Mr. Shelke Shivaji T. and learned advocate for Respondents No.1a, 2a, 3 Mr. A. R. Joshi holding for Mr. Deshmukh Rajendra S. Perused the documents on record.

5. The first and the foremost fact that is required to be considered is that, the original plaintiffs who had filed Regular Civil Suit No. 914 of 1989 did not prosecute the said suit. However, then the counter claim proceeded and it was dismissed. The defendants who had filed the counter claim had preferred the appeal bearing Regular Civil Appeal No. 174 of 2013 which came to be partly allowed. Perusal of the Judgment of the First Appellate Court would show that, the First Appellate Court has come to the conclusion that the appellants before it i.e. the present respondents had failed to prove that they are in possession of the suit property more than 20 years and had become owners by way of

adverse possession. That means, only the possession of the present respondents was held and then on that basis the permanent injunction has been granted subject to taking till the appropriate legal steps by the original plaintiffs. Definitely substantial rights are involved and the question also.

6. The present applicants / appellants have contended that, the delay has been caused since the legal representatives are residing at a different place. It is to be noted that, there were original eight plaintiffs, out of them five expired during litigation, and then their legal representatives have been brought on record. They are residing at different places though from two districts only. When the rights of parties are involved, liberal approach is required to be taken to condone the delay, and therefore taking into consideration the facts and circumstances, case is made out to condone the delay of 261 days in filing the second appeal. However, at the same time the inconvenience caused to the present respondents is required to be compensated in terms of money. Hence, following order

ORDER

- 1) The application is hereby allowed.
- 2) The delay caused in filing second appeal is hereby condoned subject to deposit of cost of Rs.6,000/- (six thousand) within 15 (fifteen) days from the date of this order in this Court.

3) Upon the deposit of the said amount, the second appeal be verified and registered, and the amount be distributed equally to the legal representatives of respondents No.1, 2 as well as 3.

(SMT. VIBHA KANKANWADI)
JUDGE

vjg/-.