

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

920 CIVIL APPLICATION NO.12835 OF 2018
IN SAST/24375/2018

GANPAT AMBAJI MOHOLKAR
VERSUS
YUVRAJ LAXMAN KUMBHAR AND OTHERS

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Advocate for Applicant : Mr. Shaikh R R
Advocate for Respondents No.1 to 3 and 5 : Mr. Ashtekar R.K.

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CORAM : SMT.VIBHA KANKANWADI, J.
DATE : 07-02-2019.

ORAL ORDER :

1. Present application has been filed to condone the delay of 417 days in preferring second appeal.
2. Present applicant is the original plaintiff who had filed suit for specific performance of the contract and in the alternative for the refund of the earnest money in Special Civil Suit No. 136 of 2002 before learned Civil Judge, Senior Division, Latur. The said suit came to be partly decreed. The prayer of specific performance has been rejected, however the defendants No.1 and 5 were directed to pay amount of Rs.1,50,000/- to the plaintiff. The said decree was passed on 25-02-2011. Present applicant challenged the said Judgment and decree before District Court, Jatur. The said appeal i.e. Regular Civil

Appeal No. 174 of 2012 was heard by learned District Judge-2, Latur and it was dismissed on 24-03-2017. The applicant intends to challenge the said Judgment and decree in this second appeal, however there is delay of 417 days.

3. The applicant contends that, because of his old age and illness due to blood pressure and sugar, he could not contact his advocate and therefore he could not get the knowledge about the Judgment that was pronounced by learned First Appellate Court. After getting the said knowledge, he collected the certified copy in the month of June 2018 but thereafter he was suffering from financial problems. After arranging the finance he has preferred the second appeal. He submits that, the delay is unintentional and therefore prayed for condonation of the same.

4. The application has been objected on the ground that, there is huge unexplained inordinate delay. The delay of each and every day has not been explained properly, and therefore, liberal approach cannot be taken.

5. Heard both sides. Learned advocate for the applicant submitted that, due to the illness and financial difficulty the

appellant was unable to file the second appeal in time. Whereas learned advocate appearing for the respondent submitted that, on the basis of ratio laid down in, *Basawaraj and Another Versus Special Land Acquisition Officer*, reported in (2013) 14 Supreme Court Cases 81, wherein it has been held that,

“Discretion to condone delay has to be exercised judiciously based on facts and circumstances of each case.

It has been held by the Hon'ble Supreme Court that,

“ 'Sufficient cause' cannot be liberally interpreted if negligence, inaction or lack of bona fides is attributed to the party. Even if the limitation may harshly affect the rights of a party yet that is required to be applied with all its rigour when prescribed by statute and in those cases Courts have no choice but to give effect to the same.”

6. She submitted further that, the applicant was negligent and had not taken swift actions to obtain the certified copies, approaching advocate by making necessary arrangement and file the second appeal within limitation.

7. As regards the ratio laid down in the above said ruling, nobody can dispute the said legal position but in that case itself it is stated that the discretion has to be exercised judicially based upon facts

and circumstance of each case. Here the facts in this case are that the applicant is claiming himself to be the old person. As per the learned advocate for the applicant in fact the age of the applicant is 71 though before the First Appellate Court as well as in this application a wrong age is given. He also pointed out that when the special civil suit was instituted in 2002, his age was given as 54 but it was wrongly mentioned as 48 in First Appellate Court and then 55 in this application. Under such circumstance facts are to be construed liberally and therefore taking into consideration the span from the date of the institution of the suit till today it appears that he is around 70 years.

8. It is also stated that, he is suffering from blood pressure and sugar. No document is produced on record for that illness. However as regards financial problem is concerned, there is no reason to discard his statement. It is also to be seen that, in Special Civil Suit he has given his occupation as 'Nil'. Further another factor that cannot be overlooked is that, the applicant is coming from a rural background and it appears that, he is illiterate. Special considerations are required to be given to the person who is old, poor and from a rural background as well as illiterate. Therefore,

case is made out to exercise discretion in favour of the applicant. Delay deserves to be condoned, however at the same time the inconvenience that would be caused to the other side is required to be compensated in terms of money, though the applicant claims to be poor. Hence following order.

ORDER

1. Application is hereby allowed
2. Delay caused in filing second appeal is hereby condoned subject to deposit of cost of Rs.8000/- (eight thousand) within 15 days from the date of this order.
3. After the deposit of the cost amount it be distributed to respondents No.1, 2, 3 and 5 equally.
4. After the deposit of the cost amount, Registry to verify and register the second appeal and it be placed for consideration on 08-03-2019.

(SMT. VIBHA KANKANWADI)
JUDGE

vjg/-.