

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

Civil Application No. 11541 of 2018
(In Second Appeal Stamp No. 27072 / 2018)

District : Ahmednagar

Nivrutti s/o. Ramchandra Lohare,
Age : 66 years,
Occupation : Agriculture,
R/o. Malegaon, Akole,
Dist. Ahmednagar.

.. Applicant
(Original
defendant
no.01)

versus

1. Laxmibai w/o. Vitthal Lohare,
Age : 68 years,
Occupation : Household,
R/o. Malda Road, Sangamner,
Taluka Sangamner,
Dist. Ahmednagar.
2. Sugandhabai w/o. Yeshwant
Deshmukh,
Age : 64 years,
Occupation : Agriculture,
R/o. Katalpur,
Taluka Akole,
Dist. Ahmednagar.
3. Sakubai w/o. Ramchandra
Lohare
(since deceased)

.. Non-applicants
(No.01 -
Original
plaintiff
&
Nos.02 & 03 -
Original
defendants
no.02 & 03)

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Mr. K.N. Shermale, Advocate, for the applicant.

*Mr. A.N. Nagargoje, Advocate, for non-applicant
no.01.*

Non-applicant no.02 served (Absent).

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CORAM : SMT. VIBHA KANKANWADI, J.

DATE : 09TH JANUARY 2019

ORAL ORDER :

01. Heard learned Advocate Mr. K.N. Shermale for the applicant. Learned Advocate Mr. A.N. Nagargoje appears before the Court and submits that he has instructions to appear on behalf of non-applicant no.01. So, Mr. A.N. Nagargoje is also heard. None present for non-applicant no.02 though served. Non-applicant no.03 is dead.

02. Present application has been filed for condoning the delay of 37 days caused in filing second appeal. Present applicant is the original defendant no.01. Non-applicant no.01 is the original plaintiff and non-applicants no.02 and 03 are the original defendants no.02 and 03. Original plaintiff had filed Regular Civil Suit No. 137 of 2000 before Civil Judge (Junior Division), Akole, District Ahmednagar, for specific performance of contract and perpetual injunction. The said suit came to be decreed on 25-08-2005. Present applicant - original defendant no.01 preferred Regular Civil Appeal No. 40 of 2005 before District Court at Sangamner. It came to be dismissed in default. However, in the said appeal, there were cross objections by present non-applicant no.01 - original plaintiff. The cross objections proceeded. They came to be allowed.

After confirming the decree passed by the first appellate Court, it was modified and now the present applicant - original defendant no.01 intends to file second appeal.

03. It is also submitted that the present applicant has also preferred restoration application in respect of his appeal before learned District Court at Sangamner, District Ahmednagar. For the reasons for condoning the delay, the applicant submits that he could not come to know about the judgment and decree passed in cross objection. He could not get the notice issued by the Advocate for the applicant. Thereafter, after obtaining certified copies, his advocate from Aurangabad asked him to provide certain documents. But, during that period, his wife was admitted to hospital and then she expired on 12-08-2018. The delay is unintentional. He claims to be in possession of the property and, therefore, vital rights are involved. On these grounds, he has prayed for condonation of delay.

04. Learned Advocate appearing for non-applicant no.01 has taken objection on the ground that the delay of each and every day has not been explained. The reason, that has been given, has not been supported by documentary evidence.

05. It is to be noted that the delay is of 37

days. There is no reason to disbelieve the statement of the applicant that, his wife was admitted to hospital due to disease and then expired on 12-08-2018. There is also no reason to disbelieve his say that, his advocate at Aurangabad had asked him to collect certain documents. Definitely, they might have been required for preparation of the second appeal. Under such circumstance, substantial cause has been given for the delay and, therefore, liberal approach is required to be adopted. The delay deserves to be condoned.

06. Hence, the following order :-

(a) The application is allowed.

(b) The delay caused in filing second appeal is hereby condoned. The second appeal be verified and registered.

(c) The second appeal with civil application be put for consideration on 28th January 2019.

(Smt. Vibha Kankanwadi)
JUDGE

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