

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CIVIL APPLICATION NO. 4008 OF 2018

Prabhakar Vitthalrao Biradar ...Appellant

Versus

Baburao Vitthalrao Biradar & Ors. ...Respondents

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Mr. S. G. Chincholkar, Advocate for Appellant.

Mr. U. L. Momale, Advocate for Respondent No. 1/1 to 1/3
& 3.

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CORAM : SMT. VIBHA KANKANWADI, J.

DATE : 11-01-2019.

ORAL ORDER :

01. Present application has been filed for getting the delay of 70 days condoned in preferring the second appeal. The applicant / appellant is the original plaintiff. He intends to challenge the Judgment and decree in R. C. A. No. 20 of 2012 dated 23.3.2017 by District Judge-2, Udgir arising out of R. C. S. No. 35 of 2008 dated 13.4.2012 by Second Joint Civil Judge, Junior Division, Udgir. Both the petitions were dismissed. The suit was filed for declaration of ownership and permanent injunction.

02. The applicant contends that though the Judgment was pronounced on 23.3.2017, the Clerk of the Advocate who was representing the applicant assured him that he would apply for the certified copies. However, the concerned Clerk made application on 2.6.2017 and got the copies on 30.6.2017. Thereafter, an impression was given by the said Clerk to the applicant that the limitation period would start after receipt of the certified copies. Therefore, he was under impression that till September 2017 he has limitation to prefer appeal. Thereafter, he was ill. After making arrangement for the expenses, he approached Advocate at Aurangabad and therefore, the delay has been caused.

03. Heard learned Advocate appearing for the applicant / appellant and learned Advocate appearing for respondent No. 1-1 to 1-3 and 3. Respondent No. 2 though served failed to appear.

04. Respondent No. 1-1 to 1-3 and 3 have raised objection on the ground that the delay has not been properly explained. Reasonable and good ground has not been shown for condoning the delay.

05. It is to be noted that the applicant was aware about the pronouncement of Judgment, but, then he depended on the Clerk of the Advocate, who was representing him in

the first Appellate Court. He also relied on the advice given by the said Clerk. Since the parties are coming from rural area, liberal approach is required to be taken and there is no reason to disbelieve his statement that he relied upon the opinion given by the Clerk of the Advocate, who was representing. No doubt, there is no documentary evidence in respect of ill health of the applicant, taking liberal approach the delay deserves to be condoned.

06. Hence, following order;

ORDER

- (i) Application is hereby allowed.
- (ii) The delay caused in preferring second appeal is hereby condoned.
- (iii) Registry to verify and register the second appeal and be placed for consideration on 8.2.2019.

[SMT. VIBHA KANKANWADI]

JUDGE

Dahibhate/-