

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CIVIL APPLICATION NO. 4378 OF 2017
IN
SAST NO.33027 OF 15

1. Santram s/o Kamaji Honmane,
Age 80 years, Occupation Agriculture,
R/o Tadkalas Tq. Purna Dist.Parbhani.
2. Kamaji s/o Santram Honmane,
Age 55 years, Occupation Service,
R/o Tadkalas Tq. Purna Dist. Parbhani.
3. Dnyanoba s/o Santram Honmane,
Age 51 years, Occupation Service,
R/o Tadkalas Tq. Purna Dist. Parbhani.
4. Saheb s/o Santram Honmane,
Age 48 years, occupation Service,
R/o Tadkalas Tq. Purna Dist.Parbhani.
5. Ashok s/o Santram Honmane,
Age 45 years, occupation Service,
R/o Tadkalas Tq. Purna Dist.Parbhani.
6. Bhagwan s/o Santram Honmane,
Age 27 years, occupation Agriculture,
R/o Tadkalas Tq. Purna Dist.Parbhani.
7. Datta s/o Santram Honmane,
Age 35 years, occupation Agriculture,
R/o Tadkalas Tq. Purna Dist.Parbhani. **.....Applicants.**

VERSUS

1. The State of Maharashtra,
Through Collector, Parbhani.
2. The Tahsildar & Taluka Executive Magistrate,
Purna Tq. Purna Dist. Parbhani.

3. Narayan s/o Sidram Honmane,
Age 48 years, Occupation Agriculture,
R/o Tadkalas Tq. Purna Dist.Parbhani.
4. Raju s/o Sidram Honmane,
Age 38 years, Occupation Agriculture,
R/o Tadkalas Tq.Purna Dist.Parbhani.**Respondents.**

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Mr. Kalani P. N., Advocate for applicants.

Mr. Y. G. Gujarathi, Assistant Government Pleader for
respondents No.1 and 2 – State.

Mr. R. S. Gangakhedkar, Advocate for respondents No.3
and 4.

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CORAM : SMT.VIBHA KANKANWADI, J.

**Date of Reserving The Order :
08-03-2019.**

**Date of Pronouncing The Order :
16-04-2019.**

ORDER :

1. Present application has been filed for getting 1949 days delay
condoned in filing second appeal.
2. The present applicants are the original plaintiffs who had filed
Regular Civil Suit No.175 of 2004 for declaration and permanent
injunction against the present respondents. The said suit came to
be dismissed by learned Civil Judge, Senior Division, Parbhani on 27-

01-2009. The present applicants – original plaintiffs approached District Court, Parbhani by filing Regular Civil Appeal No.27 of 2009. The said appeal was heard by learned Principal District Judge, Parbhani and after hearing both the sides, the appeal came to be dismissed on 30-03-2010. The plaintiffs want to file second appeal challenging the said Judgment and decree, however there is delay of 1949 days. It has been contended by the applicants that, the delay is unintentional. They are helpless and poor persons residing in remote area. Their advocate had not given them any advise that the appeal would lie before the High Court. They were under wrong impression that, after the decision of the first appeal, it has achieved finality. It is stated that, due to the said poor advise or suggestion, they could not file appeal in time. It is also submitted that, huge immovable property belongs to the applicants and though respondents No.3 and 4 have no concern over the suit property, they are trying to disturb the peaceful possession of the applicants, and further it is also contended that, all the applicants were unaware about filing of the appeal and in fact applicant No.7 used to look after the matter but he is handicapped and now a days he cannot move freely. On all these grounds, they prayed for condonation of delay.

3. The application has been objected by respondents No.3 and 4 by filing affidavit-in-reply. It has been stated that, they are denying all the contents and allegations in the civil application. The Courts cannot travel beyond the scope of the merit of the delay condonation and cannot consider the merits of the case. It is only required to be seen as to whether any reasonable and sufficient ground has been shown to condone the delay. The applicants are accepting the fact that, they were knowing about the decision of the first appeal. They did not approach this Court knowingly and intentionally within limitation. It is a lethargic attitude of the litigant as to not to make proper inquiry, and therefore, they do not deserve any sympathy or mercy.

4. Heard Mr. Kalani P. N., Advocate for applicants, Mr. Y. G. Gujarathi, Assistant Government Pleader for respondents No.1 and 2 – State, and Mr. R. S. Gangakhedkar, Advocate for respondents No.3 and 4. Both the learned advocates have made submissions supporting their respective contentions.

5. Learned advocate appearing for the applicants basically submitted that, liberal approach be taken for condoning the delay.

The applicants could not get proper legal advice, and therefore, could not approach this Court in time. Per contra, learned advocate for the respondents in support of his oral submissions relied on the decision in, *Lanka Venkateswarlu (D) by L.Rs. Versus State of A. P. and Ors.*, reported in *AIR 2011 Supreme Court 1199*, wherein it has been held that,

“The concepts such as “liberal approach”, “justice oriented approach”, “substantial justice” cannot be employed to jettison the substantial law of limitation. Especially, in cases where the Court concludes that there is no justification for the delay. In our opinion, the approach adopted by the High Court tends to show the absence of judicial balance and restraint, which a Judge is required to maintain whilst adjudicating any lis between the parties. We are rather pained to notice that in this case, not being satisfied with the use of mere intemperate language, the High Court resorted to blatant sarcasms. The use of unduly strong intemperate or extravagant language in a judgment has been repeatedly disapproved by this Court in a number of cases. Whilst considering applications for condonation of delay under Section 5 of the Limitation Act, the Courts do not enjoy unlimited and unbridled discretionary powers. All discretionary powers, especially judicial powers, have to be exercised within reasonable bounds, known to the

law. The discretion has to be exercised in a systematic manner informed by reason. Whims or fancies; prejudices or predilections cannot and should not form the basis of exercising discretionary powers.”

He also relied on, *Balwant Singh Versus Jagdish Singh*, reported in (2010) 8 SCC 685, wherein it has been held that,

“We may state that even if the term 'sufficient cause' has to receive liberal construction, it must squarely fall within the concept of reasonable time and proper conduct of the concerned party. The purpose of introducing liberal construction normally is to introduce the concept of 'reasonableness' as it is understood in its general connotation. The law of limitation is a substantive law and has definite consequences on the right and obligation of a party to arise. These principles should be adhered to and applied appropriately depending on the facts and circumstances of a given case. Once a valuable right, as accrued in favour of one party as a result of the failure of the other party to explain the delay by showing sufficient cause and its own conduct, it will be unreasonable to take away that right on the mere asking of the applicant, particularly when the delay is directly a result of negligence, default or inaction of that party. Justice must be done to both parties equally. Then alone the ends of justice can be achieved. If a party has been thoroughly negligent in implementing its

rights and remedies, it will be equally unfair to deprive the other party of a valuable right that has accrued to it in law as a result of his acting vigilantly.”

6. It can be seen from the application that, mainly on two grounds the applicants are seeking condonation of delay. First is, improper or wrong advise / wrong impression of the applicants regarding presentation of second appeal, and second is, physical inability of applicant No.7 who was alleged to be looking after the proceedings. As regards first reason is concerned, the applicants are contending that, they were not given any advice to the effect that further appeal will lie before High Court, and therefore, they were under impression that the decision of the first appellate Court is final. Important point to be noted is that, they have kept this reason as vague as possible. They have not disclosed the name of the adviser who had given them such kind of advice. It is also not clear that, as to whether they had sought this advise about possibility of appeal from a person in legal profession. On such vague contention that, they were not given such advise, it cannot be stated that it would be a reasonable and sufficient reason. The said reason also lacks further particulars as to exactly when such advice was sought and why any advice from different person in the legal profession was

not sought. Applicants are accepting the fact that, they came to know about the decision by the first appellate Court in time. Therefore, their contention that, they are helpless, poor persons, coming from remote place, cannot be taken as a ground for getting the delay condoned. In view of the aforesaid decisions in *Lanka Venkateshwarlu (D) by L. Rs. Versus State of Andhra Pradesh, (Supra)* as well as *Balwant Singh Versus Jagdish Singh (Supra)*, though this Court require to take liberal, justice oriented and substantial justice approach, it cannot be as per *Lanka Venkatershwarlu's* case to jettison the substantial law of limitation. The delay is of 1949 days which is a huge one and for that purpose a vague reason cannot be sufficient. If the applicants had not approached proper person or had not tried to crosscheck whatever advise they had received then they are to be blamed for themselves. When they wanted to protect their property then definitely they were expected to seek any such advice and to from different persons, if possible, which would help them. By mere acceptance that, they were under wrong impression that the decision of the first appeal has achieved finality will not allow this Court to take sympathetic approach towards the applicants. The applicants, it appears that, an attempt has been done to take sympathy by posing the second

reason that is the applicant No.7 used to look after the matter and then he is handicapped. No documentary evidence is produced to support this contention nor from the existing record it was tried to be pointed out that, applicant No.7 was looking after the matter and now he is unable to move.

7. This contention is only raised just to seek sympathy from the Court. Therefore, taking into consideration the above pronouncements of the Apex Court and the fact that whatever reasons have been given by the applicants are vague, not supported by any evidence, it is huge and inordinate rather showing negligent attitude on the part of the applicant, the applicants do not deserve any sympathy. Hence, the application is rejected.

(SMT. VIBHA KANKANWADI)
JUDGE

vjg/-.