

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

CIVIL APPLICATION NO.1755 OF 2018

AND

CIVIL APPLICATION NO.2284 OF 2019

Shaikh Shafique s/o Fateh Mohammad

... Versus ...

Sayyad Hanif s/o Sayyed Murad and others

...

Mr. Qureshi Shaikhulal Abdul Gafar, Advocate for the applicant

Mr. B.G. Londhe, Advocate for the respondent Nos.1 to 3

...

CORAM : SMT. VIBHA KANKANWADI, J.

RESERVED ON : 05th FEBRUARY, 2019.

PRONOUNCED ON : 20th MARCH, 2019.

ORDER :

1 Civil Application No.1755 of 2018 has been filed for getting delay of 2314 days condoned for filing Second Appeal, whereas Civil Application No.2284 of 2019 is filed for production of documents.

2 The applicant/appellant is the original plaintiff, who had filed Regular Civil Suit No.806/2006 before 8th Joint Civil Judge Junior Division, Aurangabad for declaration of ownership and recovery of possession of the

suit house against the respondents. The said suit came to be decreed. Original defendants preferred Regular Civil Appeal No.170/2008 before District Court, Osmanabad. It was heard by learned District Judge-4, Aurangabad and had been partly decreed on 22.02.2011. The relief of declaration of ownership was granted. The declaration of ownership was confirmed by the First Appellate Court, however, the relief of recovery of possession was rejected. The applicant/plaintiff intends to file Second Appeal before this Court, however, there is delay of 2314 days. It has been contended by the applicant that due to health problem and poor economic condition the delay has been caused. He was suffering from right internal ear disease and was admitted to Government Medical College/Hospital, Aurangabad. It is also stated that he is a Washerman (Dhobi) and his financial condition is very poor. Therefore, he could not arrange for the finances to prefer the Second Appeal. He submits that the delay is unintentional and therefore prayed for condonation of delay.

3 In Civil Application No.2284 of 2019 he has prayed that he should be allowed to produce the medical papers on record showing his admission and treatment.

4 Both the applications have been objected on the ground that the delay has not been properly explained. The delay that has been caused is

huge and inordinate. The documents could have been produced by the applicant along with the application itself but they have not tried to be produced almost after two years.

5 Heard learned Advocate Mr. Qureshi Shaikhlal Abdul Gafar for applicant and learned Advocate Mr. B.G. Londhe for respondent Nos.1 to 3. Learned Advocate appearing for the applicant submitted that though there is a delay of 2314 days, yet it was caused due to the health problem of the applicant as well as because of his poor financial condition. In fact, his suit was decreed in total. But the First Appellate Court refused to confirm the relief of possession. Therefore, vital property rights are involved. Applicant is a Washerman and therefore, leniency be shown by condoning the delay.

6 Per contra, the learned Advocate appearing for the respondents submitted that merely in two sentences the applicant wants to get the delay of 2314 days condoned. Even if we consider the documents which have been produced on record, they relate to his illness in 2012 and not beyond that. Thereafter, he had five years in his hand, to which there is absolutely no explanation. When delay of 2314 days has not been properly explained, the application deserves to be rejected. In fact, the silence on the part of the applicant amounted to his negligence. He, therefore, relied on the decision in Union of India and others vs. Nripen Sarma, 2013 (4) Mh.L.J., 121,

wherein no satisfactory explanation existed for condoning inordinate delay before the Hon'ble Supreme Court. The appeal was dismissed.

7 As regards application for production of document is concerned, though after a long gap those documents have been produced, but it can be seen that they are given by Government Medical College, Aurangabad and therefore, there is no hurdle to accept them. The production can be allowed and the said Civil Application can be disposed of accordingly. The next question would be, whether these documents can be helpful to the applicant or not. As per these documents, applicant was having some ENT problem. He was admitted on 03.09.2012. The procedure was done on 05.09.2012 and he was discharged on 09.09.2012 with advise to take follow up treatment. Except this document, there is nothing. He has not produced the follow up treatment document. Important point is that the Regular Civil Appeal No.170 of 2008 was decided on 22.02.2011. Taking into consideration the entire documents produced in the said Civil Application, it shows that the investigations were done from 28.07.2012. Even if some leniency is given, then it can be said that his problem started somewhere in July, 2012. There is also a prescription dated 12.08.2013 but what was the ailment at that time is cannot be gathered from the same. It is only a prescription and not more than that. Firstly there has to be an explanation

from 23.02.2011 to July, 2012, then he was discharged on 09.09.2012. Even if for the sake of argument, if we take till 12.02.2012 he was taking treatment, yet there was no attempt by him to prefer Second Appeal till 13.10.2017. The certified copies of the Judgment in the appeal were delivered to the applicant on 16.03.2011 itself. The second ground, which applicant intends to canvass is that he is a Washerman and he has poor financial condition. However, it is to be noted that in his plaint he has given his occupation as business. As per his contention, he had purchased the suit property for a consideration of Rs.69,000/-. Therefore, poor financial condition cannot be taken as the major reason for condoning the delay of 2314 days. The delay that was caused was huge and inordinate and the reasons given are not at all reasonable or much less sufficient. Hence, Civil Application No.1755 of 2018 deserves to be rejected. Therefore, following order.

ORDER

1 Civil Application No.2284 of 2019 is allowed for production of documents, however, Civil Application No.1755 of 2018 is hereby rejected.

(Smt. Vibha Kankanwadi, J.)