

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

CIVIL APPLICATION NO.14510 OF 2018
IN
SAST/33598/2018

MANIKLAL VIJAY MOCHI (DIED) THRO. LRS.
PREMCHAND S/O MANIKLAL PITAMBARE
VERSUS
KISHAN BHUJANGRAO JADHAV (DIED) THRO. LRS
MANGAL @ HAUSABAI KISHANRAO JADHAV AND
OTHERS

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Advocate for Applicants : Mr Nagargoje P. N.

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CORAM : SMT. VIBHA KANKANWADI, J.
Dated : March 15, 2019

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PER COURT :-

1. Present application has been filed for getting condoned the delay of 540 days in filing the second appeal.

2. Present applicant is the original defendant no.1. Present respondents had filed Regular Civil Suit No.294/1989 (old RCS No.566/1981) before the learned Civil Judge, S.D., Ambajogai for ejectment, recovery of possession and mesne profits. Said suit was dismissed by the learned Trial Court on 17.12.2012. The original

plaintiffs filed RCA No.16/2013 before the District Court, Ambajogai, District Beed. The said appeal was heard by the learned District Judge-3, Ambajogai, District Beed and it was allowed on 6.2.2017. The judgment and decree passed by the learned Trial Court was set aside and the suit was decreed. The defendants were directed to hand over the possession of the suit premises within three months from the date of the order. Now, the present applicant intends to file the second appeal challenging the said judgment and order, however, there is delay of 540 days.

3. The applicant contends that advocate engaged by him to conduct the affairs before the first appellate court had not informed him about the progress of the case, so also final decision in the appeal, due to lack of communication between them. According to the applicant, he got the knowledge about the impugned judgment and decree when he received the summons/notice in the month of January 2018 regarding filing of Regular Darkhast 30/2017 before the

executing court to execute the said decree. It is stated that thereafter the applicant had approached his advocate and applied for the certified copy on 3.3.2018. The copies were ready and received by the applicant on 17.4.2018. Thereafter, the applicant approached the advocate at Aurangabad. According to the applicant, some of the documents were not in the file, and, therefore, time was consumed by him for tracing the said documents and, therefore, there is delay. It is also stated that, the litigation is pending since 1981. He was out of Ambajogai for some period owing to his job and after his retirement he was not in the Ambajogai City for some from 2016 and 2017. The delay that has occurred is not intentional but it was due to lack of communication between him and the advocate. He has, therefore, prayed for condonation of delay.

4. Respondents no. 1 to 5 were served, but, they failed to appear.

5. Heard the learned Advocate Mr. Nagargoje for the applicant. In order to cut short, he has supported the reasons those have been given in the application.

6. Merely because respondents no. 1 to 5 have not contested this application, that does not mean that whatever reasons have been given by the applicant should be taken as reasonable and sufficiently explained. The burden is on the applicant to show that the delay that has been caused was not the result of his negligence, if any, and the reason which he should give for getting the delay condoned is reasonable and sufficient. In the application itself, the applicant has relied on the decision in the case of **Collector Land Acquisition Anantnag Vs. Katiji** reported in AIR 1987 SC 1353. The principles laid down in that ruling have been quoted on page 6 of the application itself. No doubt, while considering a delay condonation application, a liberal approach should be adopted by the Courts, even after giving leniency. It is now required to be seen with the facts of this case as to whether there

was a reasonable as well as sufficient ground for the applicant to get the delay of 540 days condoned. First and foremost fact which appears from his application is that he came to know about the judgment and decree passed in the appeal in the month of January, 2018 when he received the notice of the execution proceedings. However, he says that he approached to the advocate and moved application for the certified copies only on 3.3.2018. Said delay is not explained by the applicant. Further, he says that he received the certified copy on 17.04.2018, but, then contacted his advocate at Aurangabad. He makes a vague statement that some documents were not in the file, therefore, time was consumed for tracing the said documents and therefore the delay is caused. Details of those documents have not been given. Even if we give leniency till 17.4.2018 i.e. till he received the certified copies of judgment and decree by the appellate court, he was incumbent to explain the delay from April, 2018 to October 2018 when he filed the present application. By making a vague statement that time was consumed in

tracing the certain missing documents cannot be said to be a reasonable much less sufficient ground to condone delay of 540 days. When the decree to hand over the possession of the suit premises was passed against him, he could not have afforded to be lethargic and consumed time in tracing out the documents. He has also tried to give some reasons by saying that he was not in Ambajogai City in 2016 and 2017 to which we are not concerned. We are concerned only as aforesaid for the period between April 2018 to October 2018. When no plausible ground has been shown and inspite of eviction decree, the applicant has not acted swiftly, it shows the negligence on his part. Therefore, even after giving every kind of leniency, the result that time was consumed by him for tracing out the documents cannot be said to be reasonable and sufficient. Hence, the application is hereby rejected.

(SMT. VIBHA KANKANWADI, J.)

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