

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

921 CIVIL APPLICATION NO.14949 OF 2018
IN SAST/35543/2018

Bansi s/o Raghu Lihinar,
Age 78 years, Occupation Agri.,
R/o Borsar (Kh) Tq. Kannad
Dist. Aurangabad.
And Others

...Applicants.

VERSUS.

Popat s/o Vitthal Narote,
Age 48 years, Occupation Agri.,
R/o Borsar (Kh), Tq. Kannad
Dist. Aurangabad.
And Others.

...Respondents.

...

Advocate for Applicants : Mr. Jade Rahul M & Vijay B. Salve
Advocate for Respondents No.1, 2A to 2C, 3 to 7 : Ms. M.
D. Thube – Mhase instructed by Lex Aquila.

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CORAM : SMT.VIBHA KANKANWADI, J.
DATE : 01-03-2019.

ORAL ORDER :

1. Learned advocate is appearing for respondents No.1 to 7 and reply is submitted, it is taken on record.
2. Present application has been filed by the original defendants who intend to challenge the Judgment and decree dated 21st February 2017 passed by learned District Judge -13, Aurangabad in Regular Civil

Appeal No. 212 of 2013 thereby the appeal filed by the present respondents No.1 to 7 was allowed. In the said appeal the original plaintiffs had challenged the Judgment and decree passed in Regular Civil Suit No.18 of 2005 by 2nd Joint Civil Judge, Junior Division, Kannad Dist. Aurangabad dated 30th July 2013. The said suit was filed by the original plaintiffs for perpetual injunction. The suit was dismissed, however the appeal was allowed, thereby restraining the present applicants from interfering in the possession of the plaintiffs over the suit property. The applicants have come with a case that, there is delay of 549 days in preferring the second appeal. It is stated that, the applicant No.1 was looking after the proceeding, however he is an old person. The applicants had applied for the certified copies in the month of September 2018 and they were received somewhere in October 2018. After receiving the certified copies the applicants could not approach to the advocate due to their weak financial position. Only after making financial arrangements, they had approached advocate. The delay is unintentional and therefore they have prayed for condonation of delay.

3. The application has been objected by filing affidavit-in-reply.

It is stated that, there is huge and inordinate unexplained delay. In fact, after the Judgment and decree was passed by the First Appellate Court, the respondents had filed an application before Tahsildar on 11-04-2017 for giving an intimation regarding the said order. Pursuant to the said application Tahsildar had issued notices to the applicants on 29-04-2017 and 07-07-2017. But the applicants refused to accept those notices and under those circumstances Talathi has affixed those notices outside the Grampanchayat Office and report of the same was submitted to the Tahsildar. Thereafter, again on 21-09-2017 the Circle Officer had submitted his report along with the panchanama dated 15-08-2017, wherein it was observed that the notices were served on the applicants personally in which there was a specific mention about the Judgment and decree passed by First Appellate Court. It is further stated that, the respondents have filed execution proceedings bearing Regular Darkhast No.35 of 2017 for execution. The notices of the said proceeding were duly served to the applicants and they appeared in the matter through advocate on 11-01-2018, and thereafter they filed their say on 02-04-2018 contesting the execution proceedings. It is stated that, the applicants were aware about the decision by the First Appellate

Court, however they have intentionally not approached this Court but at a very late stage they have come up with the application for condonation of delay. Since the delay is intentional and deliberate, it should not be condoned.

4. Heard learned advocate Mr. V. B. Salve for applicants and learned advocate Ms. M. D. Thube- Mhase for respondents No.1 to 7. In order to cut short it is stated that, both of them have made submissions supporting their respective contentions.

5. It is to be noted that, the applicants have not come with a case that, they were not aware about decision by the First Appellate Court. The simple thing is that, they were knowing the decision by the First Appellate Court, why they have not preferred any application for certified copies is a question. They want to get the delay condoned on two grounds. First is that, the applicant No.1 who was looking after the proceeding is a old person and another is the weak financial position. It is to be noted that, there are other applicants who are comparatively younger to applicant No.1, why they were not looking after the proceeding is a question and under that circumstance it can be observed that only to take advantage of the advance age of applicant No.1, it is stated that he was looking

after the proceeding. As regards second ground is concerned, since it has come on record that in the execution proceedings they have engaged advocate, it cannot be stated that their financial condition is weak. That cannot be a good ground to condone the delay. In fact though the First Appellate Court had decided the matter on 21-02-2017 and the present applicants appeared in the execution proceedings in January 2018, filed their say in April 2018, yet they did not obtain certified copies till September 2018. This fact itself shows negligence on the part of the applicants. Another fact is also required to be noted is that, the fact of decision by the First Appellate Court was also made known to the applicants by other method, that is, service of notice by Tahsildar time and again which they had refused, so also by way of drawing panchanama by the Circle Officer. When from all these sources applicants were made known regarding the decision by the first Appellate Court, there was no hurdle for them to at least obtain certified copies. The delay of 549 days under these circumstances is definitely huge, inordinate and it can be said that it is unexplained. In every circumstance the old age or / and illiteracy cannot be taken as a good ground to condone the delay. The circumstances those have been produced on record in affidavit-in-reply together with the documents show that,

the delay is intentional and it was due to the negligence on the part of the applicants, hence it cannot be condoned. No sufficient and reasonable ground has been shown to condone the delay. Hence, the application is rejected.

(SMT. VIBHA KANKANWADI)
JUDGE

vjg/-.