

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

1 SECOND APPEAL NO.171 OF 2018

- 1] Mathurabai w/o. Rajaram More.
- 2] Balasaheb s/o. Rajaram More.
- 3] Nilawati w/o. Rajaram More.
- 4] Kamal w/o. Narayan Gonde.
- 5] Pushpa w/o. Bapurao Naikwade

.. APPELLANTS

VERSUS

Sudamati w/o. Madhukar Mane. **.. RESPONDENT**

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Mr.Dhananjay Deshpande, Advocate for the appellants.

Mr.S.V.Kulkarni, Advocate for the respondent – sole.

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CORAM : V.L.ACHLIYA,J.

DATE : 25.09.2019

PER COURT:

1] Being aggrieved by order dated 02.11.2017 passed by the District Judge-1, Majalgaon in Misc. Civil Application No.58/2015, thereby rejected the application seeking condonation of delay in filing Appeal, the appellants-original defendant nos.1 to 5 have preferred this Second Appeal.

2] Heard the learned counsel for the appellants and the respondent. Perused the impugned order dated 02.11.2017 passed by the First Appellate Court to refuse to condone the delay of more than 9 years and 4 months and 3 days in filing the Appeal.

3] In brief, it is the contention of the learned counsel for the appellants that the order passed by the First Appellate Court is not sustainable in law. It is submitted that the appellants have satisfactorily explained the delay of 9 years, 4 months and 3 days in filing the Appeal. It is contended that the appellants are the rustic people coming from the village background and unaware as to procedure to be followed in filing appeal. Since the appellants were not aware about procedure of law, they failed to appear in the matter after receipt of the suit summons. On recording their absence, the trial Court has proceeded with suit and decreed the suit in favour of plaintiff. It is further submitted that the judgment and decree passed by the trial Court was passed in the year 2006 in favour of the respondent-plaintiff. The respondent-plaintiff was unaware as to the decree passed in her

favour. She filed another suit in the year 2011 seeking same relief. After receipt of the suit summons, the appellants approached to advocate and brought to his notice about earlier suit filed by plaintiff. After taking inspection of the proceedings of earlier suit brought the factual position to notice of court. Thereafter, the respondent-plaintiff abandoned the subsequent suit and filed execution of decree passed in earlier suit. As per legal advice, the appellants filed appeal along with application seeking condonation of 9 months and 4 months delay in filing the appeal. In this background, learned counsel submits that delay caused in filing appeal was not willful and deliberate and caused due to illiteracy.

4] On the other hand, learned counsel for the respondent supported the order passed by the first appellate Court rejecting the application seeking condonation of delay. It is pointed out that as per submission advanced, the appellants got knowledge of the decree passed against them when they appeared in the subsequent suit filed in the year 2011 and taken inspection of proceedings of earlier suit filed by plaintiff and decree

passed thereon. But the appellants have not filed Appeal immediately thereafter. No explanation has been offered as to delay in filing appeal even after inspection and obtaining certified copy of judgment and decree served in the year 2011. It is contended that in order to condone the delay, it is incumbent for the person seeking condonation of delay to explain the cause for not filing appeal within time. It is submitted that in the background of overall facts of the case it is contended that the appellants have throughout acted negligently. It is pointed out that though the suits summons were duly served upon the appellants – defendants, they failed to record their appearance and to contest the suit. The suit proceeded *ex parte*. The Appeal has been filed after more than 9 years of passing judgment and decree. The delay has not been properly explained. In that view, appeal raises no substantial questions of law to entertain this Appeal.

5] On due consideration of the submissions advanced in the light of overall facts of the case, I am of the view that no case is made out to entertain Appeal. Appeal

raises no substantial questions of law. It is an admitted position that the suit was filed in the year 2003. Though the suit summons were served upon the appellants-defendants, they failed to record their appearance. The suit proceeded *ex parte*. The decree was passed on 26.06.2006. The appeal was filed after period of more than 9 years and 4 months. The application filed seeking condonation of delay noway reflect satisfactory explanation as to delay of 9 years caused in filing appeal. The application has been filed in most casual manner. It is the case of the appellants themselves that they had secured the copy of the judgment and decree passed in suit and produced the same in another suit filed in the year 2011 by the respondent – plaintiff seeking same relief. The certified copy of the same was secured in the year 2011. In that view, no explanation has been put forth as to why the appeal was not filed immediately after securing certified copy in the year 2011. The appeal along with application for condonation of delay has been presented in the year 2015. Delay cannot be condoned merely on asking of party. The parties approaching the court and seeking

condonation of delay must explain delay in filing such proceeding.

6] Learned counsel for the respondent made statement across bar that the decree passed by the trial Court in the year 2006 has been executed and the respondent – plaintiff has recovered possession of suit property way back in the year 2016. In that view, no cause survives for the appellants to prosecute the appeal. For this reason alone, the Appeal deserves to be dismissed. I am, therefore, not inclined to entertain Appeal. The Appeal is dismissed with no order as to costs.

7] In view of dismissal of Appeal, Civil Application seeking stay stands disposed of in terms of order in Appeal.

[V.L.ACHLIYA]
JUDGE