

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**BENCH AT AURANGABAD****CIVIL APPLICATION NO. 11733 OF 2016**

IN

**CIVIL (REVIEW) APPLICATION STAMP NO.
8013/2016**

IN

SECOND APPEAL NO. 660 OF 2012

Shaikh Samdani S/o Abdul Khadir,
@ Ghudulal, Age : 57 Years,
Occ. Agriculture,
R/o. Momin Mohalla, udgir,
Taluka Udgir, District Latur.

2. Jahadabee W/o Khajamiyan
Age : 70 Years, Occ. Household,
R/o. Udgir, District Latur.
3. Gulabaharbee W/o Yusufmiyan,
Age : 67 Years, Occ. Household,
R/o. Udgir, District Latur.
4. Jilani S/o Abdul Khadar @ Ghudulal,
Age : 55 Years, Occ. Labour
R/o. Udgir, at present Bombay.

...APPELLANTS

VERSUS

1. President, balaji Maharaj Mandir,
Punch Committee, Ahmedpur,
Balaprasad Baheti, Age : 65 Years,
Occ. Business and Agriculture,
R/o. Ahmedpur, District Latur.
2. Charity Commissioner, Aurangabad,
Charity Commissioner Office,
Aurangabad.
3. Mumtajbee W/o Mehtab Qureshi,
Age : 62 Years, Occ. Household,
R/o. Ahmedpur, District Latur.
(Died) Her Legal Representatives
- (e) Ahmed S/o Mahetabsab Qureshi,

Age : 63 Years, Occ. Business,

- (f) Mastansab S/o Mahetabsab Qureshi,
Age : 53 Years, Occ. Business
- (g) Chand Pasha S/o Mahetabsab Qureshi,
Age : 48 Years, Occ. Business
- (h) Ismail S/o Mahetabsab Qureshi,
Age : 43 Years, Occ. Business,
All R/o. Ahmedpur, Taluka Ahmedpur,
District Latur.

..RESPONDENTS

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Advocate for Applicants : Mr. S.A. P. Quadri
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CORAM : T.V. NALAWADE J.
DATE : 12.02.2020.

ORDER :-

The application is filed for condonation of delay of 105 days caused in filing review proceeding against the order passed in Second Appeal No. 660 of 2012 on 27.10.2015.

2. Heard the learned counsel for the applicants.
3. Condonation of delay is a discretionary power. At the time of exercising the discretionary power, the Court is expected to consider as to whether there is sufficient cause in respect of the delay and as to whether there is some arguable case in the main matter. This Court is considering both the points in the present proceeding.
4. The record of the present matter shows that though the matter was filed in the month of March 2016 the circulation

was not obtained and only due to the order passed by this Court matter was first time brought before this Court on 17.3.2017. Nobody turned up for the applicants and so matter was adjourned for giving opportunity to the applicants to turn up. He was expected to appear on 31.3.2017 as the matter was fixed but unfortunately the matter was not reached before this Court and nobody turned up. The matter was again brought before this Court on 23.01.2020. By passing order this Court observed that applicants was not showing interest to prosecute the matter. By way of last chance, matter was again adjourned and it was made to stand over to 05.02.2020. Now today the learned counsel for the applicants is present and he argued the matter. In the application filed for condonation of delay it is contended that the applicants were not able to contact the Advocate as there was communication gap between them and so the delay is caused. This contention is not at all acceptable. For hearing of the Second Appeal only the presence of the counsel who is appointed by the party is necessary and presence of the party is never necessary. Thus, it cannot be said that the matter was decided in the presence of the party. It can be presumed that the matter was decided in the presence of the counsel and counsel had knowledge about the decision. Thus, the ground given in the application is

not at all tenable.

5. So far as merit of the matter are concerned, it can be said that the grounds which the applicants wants to raise cannot be considered in review proceeding. Learned counsel wants to show that when there was a case that the sale deed was not genuine, it was forged, the relief of redemption of mortgage was not given. He wants to show that when the original sale deed was not on record, the Court acted on the basis of only certified copy. He wants to show that the Court had formed opinion that due to absence of permission of Assistant Charity Commissioner it was not possible to entertain the matter itself but the Court went on to decide the matter on merits.

6. All the aforesaid points are considered by this Court while passing the order dated 27.10.2015. This Court has made necessary observations with regard to burden of proof when the case of forgery or fraud is put up by the plaintiff. The transaction of mortgage was very old, pre -1931 A.D and it was case of the defendants that the sale deed was executed subsequent to mortgage transaction. The suit came to be filed in the year 1993. All these circumstances were relevant. Further relevant provisions regarding consideration of document of 30 years old were also considered by this Court

as certified copy of the sale deed in respect of suit property was produced. Thus, the ground raised are considered by this Court and review of that decision is not within the scope of the review. In the result, both the applications stand dismissed.

(T.V. NALAWADE, J.)

YSK/