

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

WRIT PETITION NO.5642 OF 2007

GOVIND GANPAT KAMBLE
age 65 years, Occ. Agril,
R/o Kanoli, Tq. Sangamner,
District Ahmednagar.

..Petitioner...

VERSUS

PANDHARINATH KONDAJI KAMBLE
age 60 years, Occ. Agril,
R/o Kanoli, Tq. Sangamner,
District Ahmednagar.

..Respondent..

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Advocate for Petitioner : Mr. V S Bedre
Advocate for Respondent : Mr. H H Padalkar

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WITH

CIVIL APPLICATION NO.531 OF 2017

IN

WRIT PETITION NO.5642 OF 2007

PANDHARINATH KONDAJI KAMBLE
age 69 years, Occ. Agril,
R/o Kanoli, Tq. Sangamner,
District Ahmednagar.

(..applicant/orig plaintiff..)

VERSUS

GOVIND GANPAT KAMBLE
age 72 years, Occ. Agril,
R/o Kanoli, Tq. Sangamner,
District Ahmednagar.

..Non-applicant..

(orig. defendant/Pet in WP)

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Mr H H Padalkar advocate for applicant.
Mr. V S Bedre advocate for non-applicant.

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CORAM : V.K. JADHAV, J.
Dated : March 03, 2020
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ORAL JUDGMENT :-

1. Petitioner is the original defendant. The respondent/plaintiff had instituted the Regular Civil Suit No.330 of 1979 for possession of the suit house. By judgment and decree dated 21.2.1992 the learned Civil Judge J.D. Sangamner decreed the suit with costs and directed the petitioner/defendants to deliver the possession of the suit house to the plaintiff within a period of one month, failing therein, the plaintiff is at liberty to recover the same through the Court at the costs of the defendant. Being aggrieved by the same, the petitioner/defendant had preferred the Regular Civil Appeal alongwith the application seeking condonation of delay caused in filing the appeal. By order dated 8.8.1997 the learned District Judge has allowed the application seeking condonation of delay caused in filing the appeal subject to the costs of Rs.200/-. The petitioner is directed to deposit the said costs of Rs.200/- within ten days and after depositing of the
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costs, said appeal was directed to be registered as Regular Civil Appeal. It is also made clear in the operative part of the order that, if, the applicant/petitioner herein would fail to deposit the costs of Rs.200/- within ten days from today, then this application shall be treated as rejected. In the year 2007 the petitioner/defendant has preferred this writ petition against the said conditional order passed by the First Appellate Court while disposing off the application seeking condonation of delay caused in preferring the appeal.

2. Learned counsel for the petitioner/defendant submits that the petitioner remained under the impression that order dated 8.8.1997 directing the petitioner/defendant to deposit the costs of Rs.200/- has been complied with. Learned counsel submits that the matter relates to the house property and, the petitioner came to know about the finality of the judgment and decree passed by the Trial Court on account of their failure to pay the costs of Rs.200/- in

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Regular Darkhast No.161 of 1995. The petitioner came to know about the same on 9.8.2007 and thus immediately within a month, the petitioner has preferred this writ petition. Writ petition is thus deserves to be allowed by permitting the petitioner/defendant to deposit the costs of Rs.200/- and after registration of the appeal, the First Appellate Court may be directed to dispose off the appeal in a time bound manner.

3. Learned counsel for respondent/plaintiff submits that Ten years after the order passed by the First Appellate Court condoning the delay subject to costs of Rs.200/-(Rs.Two Hundred), the petitioner has preferred the present writ petition. Learned counsel submits that the respondent/plaintiff could not get the fruits of the decree even in the year 2007 when the decree passed by the Trial Court way back in the year 1992 has attained finality. There is no justification for such an inordinate delay in even approaching this Court. Writ Petition is liable to be dismissed.

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4. Both the learned respective counsel submit that it is learnt from their respective briefing Lawyers that during pendency of this writ petition, parties have amicably settled their dispute, however, they do not have specific instructions from their respective clients.

5. Trial Court decreed the suit for possession of the suit house on 21.2.1992. Being aggrieved by the same, the petitioner herein has preferred Regular Civil Appeal alongwith Misc. Civil Delay Application no.175 of 1992 for condonation of delay caused in filing the appeal. The First Appellate Court has allowed the said application subject to costs of Rs.200/- with certain conditions. Admittedly, those conditions are not complied with. It has been specifically ordered that, if the applicant (petitioner herein) would fail to deposit the costs of Rs.200/- within ten days from today, then this application shall be treated as rejected. But, the petitioner without any justifiable reasons approached this Court by filing the present writ petition after a period of ten years. It appears that in the execution

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petition filed in the year 1995 on 9.8.2007 when the petitioner found that the possession of the suit house was now required to be delivered, then preferred this writ petition belatedly. In view of this, I find no merit in this writ petition. The respondent/plaintiff is not getting the fruits of the decree right from the year 1992 and even in the year 2019 if the parties have not arrived at the amicable settlement, the part of the non-execution of the decree would remain as it is. In view of this, if during pendency of this writ petition if the parties have arrived at amicable settlement, then otherwise this order would not affect the said settlement. Hence, I proceed to pass the following order.

ORDER

- I. Writ Petition is hereby dismissed. Rule discharged.
- II. Writ Petition accordingly disposed off.
- III. Pending Civil Application also stands disposed off.

(V.K. JADHAV, J.)

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