

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

923 CIVIL APPLICATION NO.13534 OF 2019
IN SAST/29142/2019

KESHA DAJI GAVIT AND OTHERS
VERSUS
NAHALIBAI KHAPARYA GAVIT DEAD LRS. ELABAI
(ILABAI) WADYA GAVIT AND OTHERS

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Mr.R.N. Jain, Advocate for applicant.
Ms.Pradnya Talekar for Talekar and
Associates, Advocate for respondent no.2.

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CORAM: V.L. ACHLIYA,J.
DATE : 04.02.2020

ORAL ORDER:

The applicants-appellants have moved this application seeking condonation of 159 days delay in filing appeal for the reasons set out in detail in the application.

2. Heard the learned counsel for the applicants and counsel representing the respondents. Perused the application moved seeking condonation of delay and affidavit in reply filed by the respondent no.1 and adopted by other respondents. Also perused the impugned judgments and decree passed by Courts below.

3. In brief, it is the contention of

learned counsel for the applicants-appellants that the delay caused in filing the appeal cannot be termed as deliberate and intentional. It is submitted that the applicants are illiterate persons. They are tribals and residing in remote tribal area. The judgment and decree came to be passed by the First Appellate court on 10.01.2019. The First appellate court partly allowed the appeal. The advocate representing the appellants has not explained the judgment and decree passed by the first appellate Court. Only after receipt of notice of measurement of land, the applicants approached to their Advocate and came to know that though the appeal is partly allowed but the decision has been rendered against them. Immediately, thereafter they have taken steps to file appeal. Due to this reason, the delay has been caused in filing appeal.

4. It is submitted that the applicants-appellants have good case to succeed in appeal. In case, the delay is not condoned, there is every likelihood that their meritorious case may be rejected for technical reasons. On the other hand, no prejudice would cause to the respondents if

delay is condoned as ultimately the case will be decided on merits.

5. On the other hand, learned counsel for the respondents opposed the application with contention that the reasons assigned are not sufficient to condone the delay. By referring to overall facts of the case, the learned counsel submits that the appellants have preferred appeal only after the Measurer has visited the site for taking measurement. They resisted the Measurer from carrying out the measurement. When they failed in their attempt to stop the measurement of the land approached this Court and filed appeal. It is submitted that the reasons assigned for condonation of delay are false, concocted and by way of after thought. It is submitted that the respondents-plaintiffs are deprived of decree passed in their favour from last more than 16 years. The appeal filed by the appellants is nothing but an act to protract the execution of decree.

6. On due consideration of submissions advanced in the light of overall facts of the case, I am of the view that the delay deserves to be condoned. The applicants-

appellants are tribals residing in remote tribal area. The possibility cannot be ruled out that the applicants may not have understood the implication of the judgment and decree passed by the First Appellate Court, which has partly allowed the appeal. While passing the judgment and decree, the First Appellate Court has directed to carry out the measurement through T.I.L.R. and based upon outcome of the measurement directed to take further steps on the basis of outcome of such measurement. The legality of such judgment and decree is under challenge.

7. If the delay is condoned, no serious prejudice would cause to the respondents as ultimately the case will be decided on merit. On the contrary, if the delay is not condoned, there is every likelihood that the meritorious matter may be rejected for technical reason. The Hon'ble Supreme Court in the case of ***Esha Bhattacharjee v. Managing Committee of Raghunathpur Nafar Academy & others*** reported in (2013) 12 SCC 649, after taking survey of precedents of law on the issue of condonation of delay culled out the following broad principles to be borne in

mind by the courts of law while dealing with an application seeking condonation of delay:-

"i) There should be a liberal, pragmatic, justice-oriented, non-pedantic approach while dealing with an application for condonation of delay, for the courts are not supposed to legalise injustice but are obliged to remove injustice.

ii) The terms "sufficient cause" should be understood in their proper spirit, philosophy and purpose regard being had to the fact that these terms are basically elastic and are to be applied in proper perspective to the obtaining fact-situation.

iii) Substantial justice being paramount and pivotal the technical considerations should not be given undue and uncalled for emphasis.

iv) No presumption can be attached to deliberate causation of delay but, gross negligence on the part of the counsel or litigant is to be taken note of.

v) Lack of *bona fides* imputable to a party seeking condonation of delay is a significant and relevant fact.

vi) It is to be kept in mind that adherence to strict proof should not affect public justice and cause public mischief because the courts are required to be vigilant so that in the ultimate eventuate there is no real failure of justice.

vii) The concept of liberal approach has to encapsulate the conception of reasonableness and it cannot be allowed a totally unfettered free play.

viii) There is a distinction between inordinate delay and a delay of short duration or few days, for to the former doctrine of prejudice is attracted whereas to the latter it may not be attracted. That apart, the first one warrants strict approach whereas the second calls for a liberal delineation.

ix) The conduct, behaviour and attitude of a party relating to its inaction or negligence are relevant factors to be taken into consideration. It is so as the fundamental principle is that the courts are required to weigh the scale of balance of justice in respect of both parties and the said principle cannot be given a total go by in the name of liberal approach.

x) If the explanation offered is concocted or the grounds urged in the application are fanciful, the courts should be vigilant not to expose the other side unnecessarily to face such a litigation.

xi) It is to be borne in mind that no one gets away with fraud, misrepresentation or interpolation by taking recourse to the technicalities of law of limitation.

xii) The entire gamut of facts are to be carefully scrutinised and the approach should be based on the

paradigm of judicial discretion which is founded on objective reasoning and not on individual perception.

xiii) The State or a public body or an entity representing a collective cause should be given some acceptable latitude."

8. Thus applying the broad principles laid down by the Apex Court in the given facts and circumstances of the case, I am of view the delay deserves to be condoned. The prejudice caused to the respondents on account of delay can be compensated in terms of money. I am therefore inclined to condone the delay subject to cost of Rs.25,000/- to be payable by applicant to the respondents. Accordingly, the application is allowed in terms of prayer clause "B" subject to deposit of Rs.25,000/- as cost within four weeks from today. The amount be deposited in this Court. On deposit of cost the respondents will be at liberty to withdraw the amount. On deposit of cost, the appeal be registered and placed for admission on 07.04.2020. Failure to deposit cost, the order to condone the delay stands recalled.

9. Stand over to 07.04.2020.

[V.L. ACHLIYA]
JUDGE

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