

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

CIVIL APPLICATION (CAS) NO. 1251 OF 2017
IN
SECOND APPEAL (ST) NO. 1571 OF 2017

(Dr. Ambedkar Smarak Baudhajan Semitee and others Vs. Dr. Babasaheb Ambedkar Smarak
Samitee and others)

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's Orders.

Court's or Judge's orders.

Mr. Ashish Kadukar, Advocate for appellants.
Mr. M.P. Khajanchi, Advocate for respondent Nos.1, 3, 4,
5 & 7.

CORAM : ANIL S KILOR, J.
DATE : 21th JANUARY, 2020.

1. This is an application for condonation of delay in filing Second appeal. The delay caused in filing second appeal is of 426 days. The explanation is given in paragraph No.7 of the application, which reads thus:

"7. It is submitted that the counsel then informed the appellants that documents and the impugned Judgment and Decree will be required. However, the Appellant no.3 Murlidhar being an old aged and poor man, himself could not immediately make an application before the Trial Court to obtain the said certified copies. Said Murlidhar also could not arrange for any other person to go to Chandrapur and meet the concerned Clerk to apply for the certified copies, for some time. The Appellant no.3 Murlidhar applied for the certified copies on 24.02.2016 and received the same on 07.03.2016. Sometime in May 2016 the Appellant met the present Counsel and sought legal position for filing Second Appeal. However, due to Summer vacation it was not possible to file the same and therefore the Counsel asked

them to wait until the Court reopens”.

2. The learned counsel for the appellants submits that the suit for possession and permanent injunction was instituted and the same was dismissed vide judgment dated 25.02.2009, passed in RCS No.197/1998 by learned 2nd Jt. Civil Judge Senior Division, Chandrapur.

3. The learned counsel for the appellant further points out that the said judgment and order was challenged in Writ Petition No.6791/2015 and the same was withdrawn on 16.12.2015.

4. The writ petition was withdrawn on advice of the counsel to file first appeal. Since, the appellant was not having the certified copy of the impugned judgment and it is the requirement to file first appeal, the appellant applied for certified copy on 24.02.2016 and thereafter, he received it on 07.03.2016.

5. The learned counsel for the appellant has drawn my attention to the application for condonation of delay in filing first appeal. He has pointed out that there was a delay of about 5 months and 11 days. According to him, all the appellants are old aged and their financial condition was not good and therefore, delay was caused.

6. The said application for condonation of delay was rejected by the learned District Judge, Chandrapur, vide judgment dated 19.08.2015 passed in Misc. Application

No.121/2009. The appellants have approached to this court by way of second appeal against the said judgment and order. However, in filing the second appeal and there is a delay of 426 days and therefore, this application.

7. The learned counsel for the appellants argues that the sufficient explanation is offered by the appellant in the application for condonation of delay and in view of the said explanation, he prayed for condonation of delay of 426 days.

8. Per contra, Shri Khajanchi, learned counsel for the non-applicants/respondents submits that sufficient explanation is not offered by the appellants and that is the pre-requisite while considering the application for condonation of delay. He has drawn attention of this court to paragraph No.10 of the impugned judgment dated 19.08.2015, which reads thus:

“10. After carefully hearing submissions of both the parties and going through the records, it reveals that the suit of the applicants was dismissed by the learned trial court on 25.02.2009 and the appeal was preferred on 12.10.2009. On perusal of the judgment, it shows that there were 8 plaintiffs and 7 defendants in the suit before the learned trial court. However, only 5 applicants have filed the present appeal. In the application filed by the applicants, only explanation as regards to Murlidhar Dudhe, Niranjana Dudhe and Mahanandabai Walke is mentioned. Apart from this, there is no details as regards to the position of other trustees, who were party before the learned trial court, is given.”

9. Shri Khajanchi further relied upon the judgment

of the Hon'ble Supreme Court of India in the case of **Basawaraj and another Vs. Special Land Acquisition Officer, reported in (2013) 14 SSC 81**. He has drawn the attention of this court to paragraph Nos.9 and 12 of the judgment, which are as follows:

“Sufficient cause is the cause for which the defendant could not be blamed for his absence. The meaning of the word “sufficient” is “adequate” or “enough”, inasmuch as may be necessary to answer the purpose intended. Therefore, the word “sufficient” embraces no more than that which provides a platitude, which when the act done suffices to accomplish the purpose intended in the facts and circumstances existing in a case, duly examined from the viewpoint of a reasonable standard of a cautious man. In this context, “sufficient cause” means that the party should not have acted in a negligent manner or there was a want of bona fide on its part in view of the facts and circumstances of a case or it cannot be alleged that the party has “not acted diligently” or “remained inactive”. However, the facts and circumstances of each case must afford sufficient ground to enable the court concerned to exercise discretion for the reason that whenever the court exercises discretion, it has to be exercised judiciously. The applicant must satisfy the court that he was prevented by any “sufficient cause” from prosecuting his case, and unless a satisfactory explanation is furnished, the court should not allow the application for condonation of delay. The court has to examine whether the mistake is bonafide or was merely a device to cover an ulterior purpose. (See Manindra Land and Building Corpn. Ltd. v. Bhutnath Banerjee, Mata Din v. A. Narayanan, Parimal v. Veena and Maniben Devraj Shah v. Municipal Corpn. of Brihan Mumbai).

12. It is a settled legal proposition that law of limitation may harshly affect a particular party but it has to be applied with all its rigour when the statute so prescribes. The court has no power to extend the period of limitation on equitable grounds. “A result flowing from

a statutory provision is never an evil. A court has no power to ignore that provision to relieve what it considers a distress resulting from its operation.” The statutory provision may cause hardship or inconvenience to a particular party but the court has no choice but to enforce it giving full effect to the same. The legal maxim dura lex sed lex which means “the law is hard but it is the law”, stands attracted in such a situation. It has consistently been held that, “inconvenience is not” a decisive factor to be considered which interpreting a statute.”

10. The learned counsel for the appellant in reply, relying upon the unreported judgment of the Hon’ble Supreme Court of India in the case of *University of Delhi vs. Union of India*. He relied upon the paragraph No.20. However, I don’t find favour with the arguments of the appellants and according to me, looking to the facts of the present case, the said judgment is not applicable to the present case.

11. As the Hon’ble Supreme Court has observed in the case of Basawaraj’s case (supra) that the meaning of the word “sufficient” is “adequate” or “enough”, inasmuch as may be necessary to answer the purpose intended. The Hon’ble Supreme Court of India further observes that word “sufficient” embraces no more than that which provides a platitude, which when the act done suffices to accomplish the purpose intended in the facts and circumstances existing in a case, duly examined from the viewpoint of a reasonable standard of a cautious man. Sufficient cause means that the party should not have acted in a negligent manner or there

was a want of bonafide on its part in view of the facts and circumstances of a case or it cannot be alleged that the party has “not acted diligently” or “remained inactive”.

12. The Hon’ble Supreme Court of India further observes that it is a settled legal proposition that law of limitation may harshly affect the particular party but it has to be applied with all its rigour when the statute so prescribes.

13. At this juncture, it is necessary to point out that before the trial Court there were 8 plaintiffs who had filed Regular Civil Suit No.197/1998 however, while approaching to the lower appellate Court by way of MCA No.121/2009 only 5 applicants had preferred the appeal and 3 plaintiffs have not filed appeal. Even before this Court in Second Appeal only 5 plaintiffs have approached. In paragraph No.7 of the application for condonation of delay in filing second appeal, no explanation is offered about the same. Moreover it is clear from paragraph No.7 of the application for condonation of delay referred above that no sufficient, adequate or enough explanation is offered by the applicants. Thus, after going through the record, I have no hesitation to hold that the applicants have failed to explain the delay.

14. The learned counsel for the appellant further submits that the Court can condone the delay by imposing the costs on applicants, to compensate the inconvenience caused to the other party. The learned counsel for the

appellant to fortify his contention, has placed reliance on the judgment of this Court in the case of *Rajendra Akre vs. Rajkumar Bhalerao Balbudhe reported in 2016(1) Mh.L.J. 184.*

15. In the said judgment, this Court has observed that directions to pay costs can be issued subject to there being any reasonable ground to condone the delay. In this case there is no sufficient cause shown by the appellants. Thus according to me, the said judgment is distinguishable and not applicable to the case of the appellant.

16. In view of the above observations and well settled law position, I do not find any merit in the present application and the application is therefore, rejected as no sufficient explanation is offered by the appellants for condonation the delay.

JUDGE