

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

CIVIL APPLICATION (CAS) NO. 1254/2017
IN
SECOND APPEAL (ST.) NO. 23522/2016.

Mishrilal Chhotelal Mahatav,
..VS..

Purushottam @ Uttam Gopal Thote and Ors.,

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

Court's or Judge's orders

Shri S. A. Mohta, Advocate for the applicant.
Shri K. P. Mahalle, Advocate for the respondent No.5.

CORAM : MADHAV J. JAMDAR, J.

DATED : 13th March, 2020

1. This application is filed by applicant seeking that delay of about 4628 days in filing the Second Appeal be condoned. The Second Appeal has been filed being aggrieved by the judgment and decree dated 19.12.2003 passed in Regular Civil Appeal No.529/1991. Thus, it is clear that the judgment and decree dated 19.12.2003 is sought to be challenged by filing the present Second Appeal on 26.09.2016 i.e. after a period of about twelve years and nine months. It is very unfortunate that while giving reasons for such a long delay of more than twelve years, allegations are made against the Advocate who appeared for the applicant before the lower Appellate Court. The allegations are that the Advocate appearing for the applicant before the First Appellate Court did not immediately contact and inform about the impugned

judgment and decree passed against the applicant and therefore, the applicant could not take appropriate steps in order to challenge the impugned judgment and decree. It is very clear that for more than 12 years the applicant has not approached his Advocate and unnecessary allegations are made against the Advocate. Thus, this long delay of more than 12 years in approaching the Advocate who appeared in the Lower Appellate Court clearly shows that the applicant is grossly negligent in looking after the proceedings.

2. A bare perusal of the application clearly shows that the applicant himself was grossly negligent in looking after the case. The further contention raised in the application that the applicant is old and poor person and facing financial crises and therefore, he could not take necessary steps to file appeal. The suit has been filed seeking partition and the same was decreed only with respect of house property by judgment and decree dated 05.12.1989 and in the appeal, the partition of apart from the house property the field Survey No.407/1 was granted. Thus, it is very clear that the applicant is in possession of the entire agricultural land. Therefore, the contention that he has not having any funds is also not correct and in any case no details whatsoever are given regarding that aspect. Perusal of the application shows that no sufficient grounds are set out for condonation of long delay of more than 12 years.

3. Shri K. P. Mahalle, learned Advocate for the respondent No.5 pointed out the judgment of the Hon'ble Supreme in the case of **Maniben Devraj Shah Vs. Municipal Corporation of Brihan Mumbai**, reported in **2012(3) ALL MR 450 (S.C.)** and particularly paragraph No.18 of said judgment, wherein it has been held that,

“18. What needs to be emphasised is that even though a liberal and justice oriented approach is required to be adopted in the exercise of power under Section 5 of the Limitation Act and other similar statutes, the Courts can neither become oblivious of the fact that the successful litigant has acquired certain rights on the basis of the judgment under challenge and a lot of time is consumed at various stages of litigation apart from the cost. What colour the expression ‘sufficient cause’ would get in the factual matrix of a given case would largely depend on bona fide nature of the explanation. If the Court finds that there has been no negligence on the part of the applicant and the cause shown for the delay does not lack bona fides, then it may condone the delay. If, on the other hand, the explanation given by the applicant is found to be concocted or he is thoroughly negligent in prosecuting his cause, then it would be a legitimate exercise of discretion not to condone the delay. In

cases involving the State and its agencies / instrumentalities, the Court can take note of the fact that sufficient time is taken in the decision making process but no premium can be given for total lethargy or utter negligence on the part of the officers of the State and/or its agencies / instrumentalities and the applications filed by them for condonation of delay cannot be allowed as a matter of course by accepting the plea that dismissal of the matter on the ground of bar of limitation will cause injury to the public interest”.

He also placed reliance on judgment of the Hon’ble Supreme Court in the case of **Balwant Singh (Dead) Vs. Jagdish Singh & Ors.**, reported in **2010(6) ALL MR 480 (S.C.)** particularly paragraph No.13 of said judgment, wherein it has been held that,

“In construing Section 5 it is relevant to bear in mind two important considerations. The first consideration is that the expiration of the period of limitation prescribed for making an appeal given rise to a right in favour of the decree holder to treat the decree as binding between the parties. In other words, when the period of limitation prescribed has expired the decree-holder has obtained a benefit under the law of limitation to treat the decree as beyond challenge, and this legal right which

was accrued to the decree holder by lapse of time should not be light heartedly disturbed. The other consideration which cannot be ignored is that if sufficient cause for excusing delay is shown discretion is given to the Court to condone delay and admit the appeal. This discretion has been deliberately conferred on the Court in order that judicial power and discretion in that behalf should be exercised to advance substantial justice. As has been observed by the Madras High Court in Krishna Vs. Chathappan, ILR 13 Mad 269.

It is however, necessary to emphasize that even after sufficient cause has been shown a party is not entitled to the condonation of delay in question as a matter of right. The proof of a sufficient cause is a condition precedent for the exercise of the discretionary jurisdiction vested in the court by Section 5. If sufficient cause is not proved nothing further has to be done; the application for condoning delay has to be dismissed on that ground alone. If sufficient cause is shown then the Court has no enquire whether in its discretion it should condone the delay. This aspect of the matter naturally introduces the consideration of all relevant facts and it is at this stage that diligence of the

party or its bona fides may fall for consideration;...”

If the conduct of the applicant and reasons given for delay condonation are examined in the light of the above observations of Hon’ble Supreme Court then it is clear that no case is made out for the condonation of long delay of more than 12 years and 9 months.

4. I have already found that there is no sufficient cause which has been made out for the condonation of delay. In fact, the baseless allegations are made against the Advocate who represented the applicant before the lower Appellate Court, therefore, the Civil Application is dismissed with costs of Rs.5,000/- (Rs. Five Thousand only).

JUDGE

Kirtak