

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

**CIVIL APPLICATION NO.3888 OF 2017
IN SAST/257/2015**

SIKANDARKHAN S/O RAJEKHAN THALGARI AND OTHERS
VERSUS
STATE OF MAHARASHTRA AND OTHERS

.....
Advocate for Applicants : Mr. M. A. Kulkarni
AGP for Respondent No.1 : Mr. A. M. Phule
Advocate for Respondent No.2 : Mr. V. Y. Patil

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CORAM : SMT.VIBHA KANKANWADI, J.
DATE : 24-08-2021.

ORDER :

1. Present application has been filed for getting the delay of 2660 days condoned in filing the second appeal.
2. Present applicants are the original plaintiffs who had filed Regular Civil Suit No.536 of 1987 before Civil Judge, Senior Division, Ambajogai for possession and consequential prayer of mesne profits. It came to be dismissed on 30-01-1992. They challenged the said decree before District Court, Ambajogai in Regular Civil Appeal No.30 of 1992. It was heard by learned Adhoc District Judge-1, Ambajogai, District Beed, and was dismissed on 20-06-2007. They wanted to file the second appeal, however, there is a delay as aforesaid, hence the present application.
3. Heard learned Advocate Mr. M. A. Kulkarni for applicants,

learned AGP Mr. A. M. Phule for respondent No.1-State and learned Advocate Mr. V. Y. Patil for respondent No.2.

4. It has been contended by the applicants that applicant No.3's father Mainuddinkhan was looking after the matter, all of them were dependent on him. Said Mainuddinkhan died on 27-04-2011. Prior to that, he was ill. After his death, the applicants had searched the papers and came to know in June 2014 about the appeal. They, therefore, enquired about the same with the local Advocate and then they came to know in October 2014 that the appeal was already dismissed. Thereafter, they applied for the certified copies, collected the expenses that were required to file a second appeal and approached this Court. The delay is unintentional and requires to be condoned.

5. At the outset, it is to be noted that there is absolutely no explanation as to what the applicants had done from 20-06-2007 till the death of Mainuddinkhan on 27-04-2011. The application is intentionally kept vague as to how many days or years prior to his death, Mainuddinkhan was ill and what was his illness. At one place, they were showing that all the applicants were dependent on Mainuddinkhan thereby indicating that they had the knowledge

about the proceedings, but since Mainuddinkhan was looking after the proceedings, they had not paid attention to it during his lifetime. Even after his death, for about three years, the applicants have kept mum and, therefore, taking into consideration the way the application has been drafted and the reasons are given, no reasonable much less sufficient ground has been shown to condone the delay of 2660 days. It also appears from the note sheet that even the application for condonation of delay was filed in the year 2015 and the stamp number was SAST No.258 of 2015, but it was in objection. Thereafter, it appears that the matter was sent to the concerned First Appellate Court for correction and after that, the necessary correction has been got made, there was no active role played by the applicants to get the decree corrected in respect of the typographical mistake. The applicants appear to be not diligent enough in pursuing the matter.

6. For the aforesaid reasons, the application stands dismissed.

(SMT. VIBHA KANKANWADI)
JUDGE

vjg/-

GAWADE
VIRENDRA
J

Digitally signed
by GAWADE
VIRENDRA J
Date: 2021.09.01
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