

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

916 SECOND APPEAL NO.79 OF 2021
WITH CA/1766/2021 IN SA/79/2021

PIRAJI MANIKRAO BANGAR

VERSUS

RATNAMALA W/O PANDITRAO GORE AND OTHERS

...

Mr. V.D. Salunke, Advocate for the appellant

Mr. M.P. Kale, Advocate for respondent Nos.1 and 2

...

CORAM : SMT. VIBHA KANKANWADI, J.

DATE : 27th AUGUST, 2021.

ORDER :

1 Present appeal has been filed by original defendant No.2 challenging the rejection of his application for condonation of delay of 10 months and 9 days in filing First Appeal by the First Appellate Court i.e. in Civil Miscellaneous Application No.71/2019 by District Judge-4, Parbhani on 21.12.2020.

2 Heard learned Advocate Mr. V.D. Salunke for the appellant and learned Advocate Mr. M.P. Kale for respondent Nos.1 and 2. In order to cut short, it can be said that they have argued in support of their respective

contentions.

3 Present respondent Nos.1 and 2 are the original plaintiffs, who had filed Regular Civil Suit No.47/2015 before learned Civil Judge Junior Division, Pathri, Tq. Pathri, Dist. Parbhani for partition and separate possession. The said suit came to be partly decreed on 18.04.2018. The original defendant Nos.2 and 3 both intended to file First Appeal, however, there was delay of 10 months and 9 days, therefore, they filed Civil Miscellaneous Application No.71/2019 for condoning the said delay. They had contended that the suit had proceeded ex parte against defendant No.3. Defendant No.2 had filed written statement but could not adduce evidence. It was contended that the original defendant Nos.2 and 3 were poor and having no sufficient income to maintain their respective families. After filing of written statement and after the receipt of summons, they went out of station for doing labour work. Due to which, the Advocate could not communicate the dates to them. In the month of March, 2019 the employees of Revenue Department had come for measurement and that time they got to know about the Judgment. It was contended that since they had gone out of station to earn and could not establish contact with their Advocate, there was said delay of 10 months and 9 days in preferring appeal. The delay was unintentional and, therefore, that be condoned.

4 The learned First Appellate Court heard the submissions on behalf of both sides and took note of the fact that the learned Advocate appearing before him for the applicants is the same, who had represented original defendant No.2 in the suit and, therefore, inference has been drawn that the reason given that the Advocate had not communicated them the dates is unbelievable. This Court does not agree with the inference that has been drawn. Merely, because now also the same Advocate is representing them, that does not allow the Court to presume that the concerned Advocate would have communicated the dates, when the matter was before the Trial Court. Further, the learned First Appellate Court went on to observe that the statement of the defendant No.2 that he went for labour work for livelihood for his family is vague, as he has not clarified during which period he went to do labour work. Important point to be noted is that the procedure appears to have not been properly followed by the learned First Appellate Court. If we peruse the roznama dated 02.12.2020, it is stated that arguments were heard on Exh.26, which was the application for maintaining *status quo* and when both the Advocates expressed that they would make final submissions on the main application, the matter was adjourned for arguments. There appears to be no opportunity given by the First Appellate Court to the applicants to lead evidence. If the evidence is not allowed to be led to support the contentions in the application, then the learned First Appellate Court was not justified in

drawing inferences. Even if the Advocates would have stated that they are ready to make final submissions; yet, there ought to have been some record to show that the Court had given an opportunity especially to the applicants to lead evidence to support their contention in the application.

5 Another fact to be noted is that when the parties are agriculturists and they are coming from rural area and they appeared to be illiterate also, under such circumstance, the application ought to have been considered with liberal approach. The catena of Judgments of this Court as well as Hon'ble Apex Court reiterate that the applications for condonation of delay should be liberally considered. Here, the delay was of only 10 months and 9 days. It could have been condoned by imposing costs.

6 Definitely, on the basis of the reasons stated above, substantial question of law was arising, however, instead of framing the substantial question of law and then keep the matter pending for years together, it can be disposed of at this stage itself. It can be partly allowed. The delay that has been caused in filing First Appeal can be condoned by imposing costs on the present appellant. Hence, following order.

ORDER

1 Second Appeal is partly allowed.

2 The Judgment and order passed in Civil Miscellaneous
Application No.71/2019 by learned District Judge-4, Parbhani on 21.12.2020
is hereby set aside.

3 The application for condonation of delay stands allowed.

4 Learned District Judge to register the appeal and take it for
disposal as per the procedure of law.

5 The appeal is expedited taking into consideration the fact that
age of respondent Nos.3 and 5 is more than 60 years.

6 Learned District Judge to dispose of the appeal as early as
possible, within a period of one year, from the receipt of writ of this order.

7 Appellant to deposit costs of Rs.40,000/- (Rupees Forty
Thousand only) before the First Appellate Court, within a period of one
month from today.

8 After the said amount is deposited, it be distributed to original
plaintiffs i.e. present respondent Nos.1 and 2, equally.

9 Civil application No.1766 of 2021 stands allowed and disposed
of.

(Smt. Vibha Kankanwadi, J.)