

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

**913 CIVIL APPLICATION NO.6142 OF 2012
IN SAST/2519/2012**

KISAN SOMA SADGIR
VERSUS
SOMABAI DATTU SADGIR AND ORS

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Advocate for Applicant : Mr. Palod L.B.

Advocate for Respondent No.2 : Mr. S. H. Pathan h/f Mr. V. Y. Bhide

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CORAM : SMT.VIBHA KANKANWADI, J.
DATE : 18-08-2021.

ORDER :

1. The present application has been filed for getting the delay of 279 days condoned in filing the second appeal.
2. Present applicant is the original plaintiff No.2 who had filed suit for declaration and injunction. The suit was decreed. Plaintiff No.2 i.e. present applicant was declared as an owner of the property and the defendants were restrained. The defendants had filed Regular Civil Appeal No.889 of 2000 (Old No.204 of 1999) before the District Court, Sangamner. The said appeal came to be allowed on 20-01-2011. The original plaintiff No.2 intends to file second appeal, however, there is a delay of 279 days.

3. Heard learned Advocate Mr. L. B. Palod for applicant and learned Advocate Mr. S. H. Pathan holding for Mr. V. Y. Bhide for respondents No.2 and 3. Learned Advocate for respondent No.3 is absent. Respondent No.1 is served.

4. The delay as it is submitted on behalf of the applicant has been caused due to the illness of the applicant. It is stated that the applicant was suffering from Severe Anemia associated with Widal positive and Thrombocytopenia since 09-02-2010 and he was advised by the doctor to take complete bed rest and not to go outside till further medical advice. Learned Advocate for respondent No.2 is strongly opposing the application. It is pointed out that the applicant has taken alleged treatment from various doctors, yet the certificate that has been produced which has been taken after much delay appears to have been procured.

5. At the outset, the documents which have been annexed would show that the applicant had taken treatment with Shri Saideep Hospital, Kasara Tq. Shahapur Dist. Thane of Dr. Sandeep Benke. The prescription does not give a proper date, in other words, whatever date has been given, because of the handwriting of the doctor it is unreadable. Thereafter, there appears to be a

prescription from doctor Nitin J. Jathar of Chaitanya Hospital from Sangamner dated 12-11-2009. Thereafter, he again had prescribed certain medicines by prescription dated 09-02-2010. Only on the basis of these prescriptions, it cannot be revealed what was the ailment but it is certain that in those prescriptions it is not mentioned that he has been advised bed rest. The only document showing the advice of bed rest is an issue of Sadguru Multi-Speciality Hospital, Diva Junction (East) Thane on 17-10-2011 stating that the applicant is suffering from the above said ailment since 09-02-2010 and got a severe weakness, advised complete bed rest and not allowed to go outside till further medical advice. Important point to be noted is that the medical officer/doctor who had issued the certificate appears to have lost the dates because he was issuing it after about one year and eight months. Yet, he was intending to state that since 09-02-2010 the applicant was advised for the complete bed rest and was not allowed to go outside. The certificate does not say that in between 09-02-2010 to 17-10-2011 how many times he had examined the applicant. Except the certificate, no other treatment papers have been produced, under such circumstances, it is hard to believe the said certificate. However, taking into consideration the fact that the dispute involved

was in respect of immovable property, the delay is of 279 days and, therefore, by taking a lenient view the application deserves to be allowed. However, the inconvenience caused to respondent No.2 who is presently opposing the application deserves to be compensated in terms of money. Hence following order.

ORDER

- 1) Application stands allowed and disposed of.
- 2) The delay caused in filing second appeal stands condoned subject to deposit of cost of Rs.25,000/- (twenty five thousand), to be deposited with this Court within a period of one (1) month from today.
- 3) After the amount is deposited, Registry to verify and register the second appeal.
- 4) The amount so deposited is allowed to be withdrawn by respondent No.2.

(SMT. VIBHA KANKANWADI)
JUDGE

vjg/-

GAWADE
VIRENDRA
J

Digitally signed by
GAWADE VIRENDRA
J
Date: 2021.08.20
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