

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CIVIL APPLICATION NO.5422 OF 2016
IN SAST/4927/2016

DADARAO APPAJI KOTKAR DIED THR. HIS LRS PRAYAGBAI DADARAO
KOTKAR AND ORS

VERSUS

LIMBAJI SUBHANJI WADEKAR DIED THR HIS LRS ANANDA LIMBAJI
WADEKAR AND ORS

.....

Mr. B. S. Chondhekar, Advocate for applicants.

Mr. B. S. Kudale, Advocate for respondent Nos.1A to 1C.

.....

CORAM : SMT. VIBHA KANKANWADI, J.

DATE : 04.08.2021

ORDER :-

. Present application has been filed for getting the delay of 4744 days condoned in filing second appeal. Present applicants are the original defendants and present respondents are the original plaintiffs who had filed Regular Civil Suit No.126 of 1985 for recovery of possession of the suit property and mesne profit. The said suit came to be dismissed by learned Joint Civil Judge Junior Division, Hingoli on 26.02.1992. Present respondents – original plaintiffs challenged the said judgment and decree in Regular Civil Appeal No.19 of 1992. It was heard by learned Additional District Judge – Hingoli and the said appeal came to be allowed. The suit was decreed. Plaintiffs was allowed to recover the possession of encroached area i.e. from defendant No.2 to

the extent of 3 Acres, defendant No.3 to the extent of 4 Acres, defendant No.4 to the extent of 6 Acres and from defendant No.5 to the extent of 5 Acres from land Survey No.65 of village Bhankheda, Tq. Hingoli, Dist. Hingoli. It was directed that defendant Nos.2 to 5 to hand over the possession to the plaintiff within a period of three months from the date of the order.

2. Heard learned Advocate Mr. B. S. Chondhekar for applicants and learned Advocate Mr. B. S. Kudale for respondent Nos.1A to 1C.

3. It has been vehemently submitted on behalf of the applicants that after the decision of the first appeal, they met the Advocate at Aurangabad for preferring the first appeal in the month of January, 2004 and entrusted the work of preparation of the appeal. Later on, they came to know that the concerned Advocate was elevated to the Bench of this Court and, therefore, the appeal could not have filed in time for want of Vakalatnama etc. Thereafter, after receipt of the intimation of the said fact to the applicants, they had entrusted the appeal to junior Advocate from same office, however, the said junior Advocate had not filed the appeal, but still the applicants were under the impression that their appeal has been filed and it is pending. The applicants were served with summons in the execution proceedings and then they made enquiry about the pending appeal. When they came to know that no

such appeal have been filed, therefore, once again they collected documents and now they had approached this Court by way of second appeal. The delay is unintentional. They were under the *bona fide* belief that their appeal has been filed. Vital rights are involved in respect of immovable property and, therefore, the delay deserves to be condoned.

4. Per contra, the learned Advocate appearing for respondent Nos.1A to 1C submitted that the delay is huge and inordinate. Whatever reason has been tried to be given is very much vague. The applicants were totally negligent and the Courts cannot help negligent party. The respondents have been kept away from the fruits of the decree for a considerable time, therefore, they do not deserve any sympathy.

5. At the outset, it is to be noted that the delay of 4744 days is not only huge, but also inordinate. Even if meticulous explanation of day to day delay is not expected, yet, it should be reasonable. Interesting point to be noted is that according to the applicants, they had handed over the papers for preparation of second appeal to the Advocate in the month of January, 2004. It is not clearly mentioned as to when the concerned Advocate was elevated to the Bench of this High Court, but then the applicant themselves say that after the receipt of the intimation i.e. in respect of elevation of the concerned Advocate, they have stated that

they had entrusted the appeal to the junior Advocate from the same office. Intentionally again the year is not stated. Even if we give concession of one or two years from January, 2004, yet that would come to around 2006 when they would have handed over the appeal to the junior Advocate. The notice/summons by the executing Court was received by them and again they have not given the date of the notice when they received that information. But in his affidavit in reply, Ananda Limbaji Wadekar states that they had filed Regular Darkhast in the year 2014 and the notice of the said Darkhast was served on the applicants on 22.01.2016. Therefore, waiting for the intimation by the Advocate regarding filing of the appeal for about 10 years atleast cannot be said to be a diligent act. Further, when they had the knowledge that the decree has been granted and they are directed to hand over the possession of the properties to the plaintiff, then such negligence or lethargy is unacceptable. Courts will not help such negligent litigants. The reason whatever has been stated is not at all sufficient much less reasonable and therefore, discretion also cannot be exercised in favour of the applicants.

6. Hence, application stands rejected.

[SMT. VIBHA KANKANWADI, J.]

scm