

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

**CIVIL APPLICATION NO. 8568 OF 2014
IN
SECOND APPEAL ST.NO.9984 OF 2014**

Baba s/o Genu Karande

**= APPLICANT
(Orig.Plaintiff)**

VERSUS

1) The State of Maharashtra & Ors.

**= RESPONDENT/S
(Orig.Defendants)**

Mr.NV Gaware,Advocate for Applicant;

Mr.BV Virdhe, AGP for Respondents

CORAM : SMT.VIBHA KANKANWADI,J.

DATE : 2nd August, 2021.

PER COURT :-

1. Present application has been filed for getting the delay of 762 days condoned in filing the Second Appeal.

2. Heard learned Advocate and learned AGP appearing for respective parties. In order to cut short, it can be stated that both of them have made submissions in support of their respective contentions.

3. The applicant is original plaintiff, who

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intends to challenge the concurrent decrees. He had filed the suit for declaration and perpetual injunction, which came to be dismissed on 12.2.2008 by Civil Judge, Senior Division, Shrigonda, District Ahmednagar. His Appeal being RCA No. 64/2008 was dismissed by learned District Judge-8, Ahmednagar on 14.3.2012.

4. The applicant contends that he got the knowledge about the said judgment on 22.2.2013 when he enquired about the matter with his Advocate. Important point to be noted is that when the applicant was represented by a competent Advocate, it will have to be presumed that his advocate would have communicated to him the decision in the appeal in reasonable time. How and why he could come to know about the said judgment and why he could make enquiry only on 22.2.2013 about the matter, has not been explained by the applicant. According to him, he applied for certified copies on 24.2.2013 and they were received on 18.1.2014. He then states that after he decided to approach this Court and sought legal advice in that respect, he was advised to get the certified copy of the judgment and

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decree of the trial Court and thereafter he has applied for those certified copies. It is to be noted that when the appeal had gone against him, he ought to have immediately applied for the certified copies. Further, he could have taken back his certified copies, which he had produced in the first appeal. It was not necessary for him to obtain it again from the Trial Court. Therefore, it appears that no proper knowledge was given to him by the concerned Advocates or he himself has acted in that way. Further, the applicant says that he is a poor rustic villager, had no financial condition. Except his bare words, there is nothing to support his contention that his condition is poor. It is also tried to be stated that the applicant is old aged person, remaining ill many a times, which had added to his miseries and therefore, the delay. It is to be noted that even the appeal was filed through his General Power of Attorney. Under such circumstance, the ill-health and age of the applicant-plaintiff, need not be considered. The General Power of Attorney had every right to take all those legal actions, which the original plaintiff could have taken.

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Therefore, no justifiable reasons, much less sufficient, are given to explain the huge and inordinate delay of 762 days.

5. Apart from the said fact, even on merits, it appears that both the Courts have consistently held on facts that the plaintiff had failed to prove the origin of his title over the suit property. The suit property is admittedly the forest land. Though the plaintiff had come with a case that his father had received the suit property by way of an agreement for duration of 11 months in the year 1945-1946, he could not produce any documentary evidence to support his contention. In fact, the suit property was to the extent of 5 acres; whereas the defendants accepted that 5 acres of land was given/allotted to the plaintiff's father. But, now the plaintiff is claiming more land of 5 acres, i.e. in all 10 acres of land and by raising such kind of story, he intends to grab further 5 acres of land, which he is trying to encroach upon. Thus, on the facts, both the Courts below are consistent and when the plaintiff could not prove his title by filing an appropriate

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documentary evidence, there is absolutely no scope for substantial question of law in the instant case. Therefore, no purpose would be served by condoning the delay, by taking an extreme lenient view. Hence, the application stands rejected.

(SMT. VIBHA KANKANWADI)
JUDGE

BDV