

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

**905 CIVIL APPLICATION NO.10725 OF 2018
IN SAST/10681/2018**

SHRIHARI GULABRAO NAIK AND ANOTHER
VERSUS
BAPURAO NAGORAO MENER AND OTHERS

...
Advocate for Applicants : Mr. Wakade Ramesh I.
Advocate for Respondents No.1 to 7 : Mr. S. A. Nagarsoge
...

CORAM : SMT.VIBHA KANKANWADI, J.
DATE : 06-10-2021.

ORDER :

1. Present application has been filed for condoning the delay of 214 days in filing second appeal.
2. The appellant No.1 is the original plaintiff. At this stage itself it is made clear that though the applicant No.2 was plaintiff No.2 before the Trial Court and respondent No.2 before the First Appellate Court and she expired during the pendency of the first appeal, yet it appears that the present applicant No.1 did not inform the said fact to the First Appellate Court. In other words, there was no compliance of Order 22 Rule 10-A of the Code of Civil Procedure. Now a note has been put that she had expired in the year 2015 itself and except applicant No.1, there is no heir left by her.

3. The present applicant along with his deceased mother filed Regular Civil Suit No.128 of 2007 for recovery of possession of the suit property and mesne profits before Civil Judge, Junior Division, Loha, District Nanded. The said suit came to be decreed on 29-01-2011. The original defendants challenged the said Judgment and decree by filing Regular Civil Appeal No.06 of 2011. The said appeal was heard by learned District Judge-2, Kandhar, District Nanded, and it was allowed on 30-05-2017. The learned First Appellate Court reversed the decree passed by the learned Trial Judge by allowing the appeal and dismissing the suit. Hence, the applicants intend to file second appeal, however, there is delay of 214 days.

4. Heard learned Advocate Mr. R. I. Wakade for applicants and learned Advocate Mr. S. D. Nagarsoge for respondents. In order to cut short, it is stated that both of them have made submissions in support of their respective contentions.

5. For condonation of delay, the applicants submits that he is a rustic villager having no knowledge of the law. Much time was spent by him seeking legal advice and ultimately he has sought the legal advice from Advocate on record. Thereafter, some time was

required in arranging the funds. He is financially weak and was unable to approach this Court within limitation. The delay is unintentional and, hence, prayed for condonation of the same.

6. Affidavit-in-reply objecting the delay condonation application has been filed on behalf of respondents No.1 to 7.

7. The learned Advocate has relied on the decision in *Esha Bhattacharjee vs Mg.Commit.Of Raghunathpur Nafar Academy and others, reported in (2013) 12 SCC 649*, wherein principles have been laid down in respect of approach to the such applications for condonation of delay.

8. Taking into consideration the pleadings, it can be said that ignorance of law is no excuse. The application has been kept as vague as possible. The time required for seeking legal advice cannot run beyond the period of limitation as Advocates are available for the guidance of people at almost all the places including the Taluka places. Secondly, weak financial condition is also not reasonable ground as the Legal Aid Services are provided at the cost of the State from Taluka Legal Services Authority, then at the District level, it is District Legal Services Authority, and even in the High Court,

there is such Wing which is for the help of needy people. When the legal advice would have been sought by applicant No.1, the concern Advocate could have also advised him to approach the Legal Aid Department. This Court in *Kamalbai w/o Narasaiyya Shrimai and another vs. Ganpat s/o Vithalrao Gavare*, reported in 2006 SCC OnLine Bom 1126, has held that,

"Delay cannot be condoned only because it is unintentional. Mere poverty cannot be a ground for condonation of delay."

9. It is to be noted in this case that the First Appellate Court has given the decision on 30-05-2017 and the present applicant had made application for getting certified copies on 04-10-2017. That means, there is almost five months delay or five months duration that was consumed by the applicant No.1 even to collect the certified copies. Therefore, it can be inferred that prior to receipt of the certified copies, the Advocates would not have given him legal advice to approach this Court. If he want to say that he had approached the same Advocate who had represented him before the First Appellate Court then he could not have taken so much of time to approach this Court. Therefore, from any angle if we consider the facts, it cannot be said that the present applicant has given

reasonable ground much less sufficient to condone the delay. It has to be reiterated that the duration of the delay is not material but the reason that is given for getting that delay condoned, will be material. Here, since the reason is not reasonable and sufficient, the application deserves to be rejected, accordingly it is rejected.

(SMT. VIBHA KANKANWADI)
JUDGE

vjg/-

GAWADE
VIRENDRA
J

Digitally signed
by GAWADE
VIRENDRA J
Date: 2021.10.07
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