

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CIVIL APPLICATION NO.148 OF 2018
IN SAST/11986/2016
WITH
CIVIL APPLICATION NO.149 OF 2018

VITTHAL KESHAVRAO DHOLE

VERSUS

PANDHARI BALIRAM DHOLE

...

Mr. J.M. Murkute, Advocate for the applicant

Mr. B.M. Dhanure, Advocate for the sole respondent

...

CORAM : SMT. VIBHA KANKANWADI, J.

RESERVED ON : 08th SEPTEMBER, 2021.

PRONOUNCED ON : 21st SEPTEMBER, 2021.

ORDER :

1 Present application has been filed for getting delay of 1495 days condoned in filing the Second Appeal. Present applicant is the original plaintiff, who had filed Regular Civil Suit No.17/1998 for declaration of ownership and perpetual injunction. The said suit came to be partly decreed on 09.08.2004. The present respondent-original defendant challenged the said Judgment and Decree in Regular Civil Appeal No.66/2004 before

learned District Judge-2, Udgir. The said appeal came to be allowed on 09.12.2011. The Judgment and Decree passed by the Trial Court in Regular Civil Suit No.17/1998 was set aside and the suit was dismissed. The present applicant/appellant intends to file Second Appeal, however, there is delay, as aforesaid of 1495 days. Hence, the present application.

2 The applicant is contending that he was not keeping well and, therefore, he had not appeared before the First Appellate Court on the date of the Judgment. He is old aged person and had no knowledge about the decision in the appeal. After he had recovered he made inquiry with his Advocate and came to know about the decision. He made request for the documents for filing Second Appeal before this Court. Then the Advocate from the Court below advised him that he need not go to Aurangabad for filing appeal, but he will send the entire file to the Advocate at Aurangabad. When he received no communication, though he was contacting the Advocate, time and again, who had not informed him the progress in the appeal, then he got to know that the defendant is trying to effect mutation entry in his favour, in view of the Judgment of the Appellate Court. He once again made request to his Advocate to give the copy of the Second Appeal, at that time, he was informed that the Second Appeal has not been filed. He once again went to the Lower Court, applied for the certified copies and filed

the Second Appeal. The delay is unintentional and he was under bona fide belief that the Second Appeal has been filed by the Advocate.

3 Heard learned Advocate Mr. J.M. Murkute for the applicant and learned Advocate Mr. B.M. Dhanure for the sole respondent.

4 Learned Advocate for the applicant submitted that the applicant is also relying upon the fact that he had met with an accident and to prove that he has produced the copy of the First Information Report, his own statement taken by the police and the injury certificate. He reiterated the said reasons given in the application and submitted that the delay be condoned.

5 Per contra, the learned Advocate for the respondent strongly objected the application and submitted that the delay is inordinate and it has not been properly, much less sufficiently explained.

6 There is no doubt that the delay that has been caused is inordinate and huge. It is then required to be seen, as to whether the delay has been properly explained or not. It is to be noted that the decision of the First Appellate Court was given on 09.12.2011 and the FIR that has been filed in respect of occurrence of the offence on 16.08.2011. That means, even before the decision of the First Appellate Court the applicant had met

with an accident and his injury certificate would show that he had sustained only two contusions, which were the simple injuries. As aforesaid, the decision of the First Appellate Court has come about four months after the applicant had met with an accident. For simple injuries four months time was sufficient for the recovery. There is absolutely no evidence adduced by the applicant to show that prior to 07.03.2015 he or his Advocate had ever applied for the certified copies. When the application for the certified copy itself is after 14 days, then no sympathy can be shown in favour of the applicant-original plaintiff. The applicant has not given the name of the Advocate he had contacted and who had promised him that he would make arrangement to send papers to the Advocate practicing before this Court. Though supporting affidavit has been filed, those allegations or averments cannot be taken as truth as intentionally the name of the Advocate is not given. Further, it is also absolutely not stated, when he got recovered and then when he went to said Advocate, on which day the promise was given by the concerned Advocate that he would transmit the copies to the Advocate practicing before this Court. How many times he made the inquiry is kept vague and if no such step was taken by the concerned Advocate, why he would give a false account to the applicant, is a question. Therefore, for vague reasons we cannot come to the conclusion that there is any sufficient reason assigned.

7 Reliance can be placed on the decision of this Court in **Kamalbhai w/o Narasaiyya Shrimal and another vs. Ganpat Vithalrao Gavare, 2006 SCC OnLine Bom 1126**, wherein it has been observed that -

“Delay cannot be condoned only because it is unintentional. So also, mere poverty cannot be a ground for condonation of delay.

The expression “sufficient cause” cannot be erased from Section 5 of the Limitation Act by adopting excessive liberal approach which would defeat the very purpose of Section 5. There must be some cause which can be termed as a sufficient one for the purpose of delay condonation.”

7.1 Further, reliance can be placed on the decision in **Patel Motibhai Naranbhai and another vs. Dinubhai Motibhai Patel and others, (1996) 2 SCC 585**, wherein it has been held by the Hon’ble Supreme Court that -

“Court should not come to the aid of a party where there has been unwarrantable delay in seeking the statutory remedy.”

8 Therefore, application stands rejected. Pending Civil Application No.149 of 2018 stands disposed of.

(Smt. Vibha Kankanwadi, J.)