

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

907 CIVIL APPLICATION NO.2019 OF 2019
IN SAST/12922/2018

DASHRATH BAPURAO MOHITE
VERSUS
HARISHCHANDRA BHIMAJI SANTRE

...
Advocate for Applicant : Ms. Kamble Neha B.
Advocate for Respondents : Mr. Patni Pramod F.
...

CORAM : M.G. SEWLIKAR, J.
DATE : 21.01.2021

PC.:-

Heard Ms. Neha Kamble learned counsel for the applicant and
Shri Patni learned counsel for the respondent.

2. Regular Civil Appeal No.284 of 2012 was decided on 13.03.2017. According to the applicant, soon after the intimation given by the advocate of the applicant, the applicant intimated the advocate i.e. on 01.07.2017 counsel for the applicant made application for certified copies on 01.07.2017 and on 12.09.2017 the same were issued. The applicant preferred appeal on 23.04.2018. Thus, there is a delay of 179 days in preferring the appeal. The cause assigned for delay is that the applicant got knowledge of the passing of the judgment and decree on 01.07.2017 i.e. beyond the period of limitation.

Soon thereafter, the applicant applied for certified copies. Another cause assigned is that the son of the applicant is suffering from mental disorder called "PSYCHOSIS" and is still under treatment of the Psychiatrist. Because of all these difficulties the applicant could not prefer appeal within the period of limitation.

3. Ms. Kamble submitted that the applicant's wife expired before the decision of the appeal. The applicant all alone has to look after his mentally challenged son. The applicant himself is 73 years old. The applicant has made out sufficient cause for condonation of delay.

4. Shri Patni learned counsel for the respondent submitted that para 5 of the application clearly indicates that the applicant was diligently pursuing other legal proceedings mentioned in those paras. He faced all these difficulties while preferring this appeal only. He submitted that no cause is assigned for making application for certified copies beyond the period of limitation. He submits that the application was ready on 06.04.2017 but it was notarised on 23.04.2018 i.e. almost one year after the application for condonation of delay was ready in all respects.

5. With the assistance of learned counsel for both the parties, perused papers. So far as the cause for not preferring the application within

the period of limitation for certified copies is concerned, the applicant has stated that his advocate intimated him late about the decision of the appeal. Therefore, application was made beyond the period of limitation. The record produced by the applicant shows that since November-2016 the applicant's son is taking treatment of Dr. Nikhil Pande (Psychiatrist). He has produced prescriptions till March-2018. This indicates that the applicant's son was taking treatment even at the time of preferring of the appeal. Therefore, the applicant has made out a sufficient cause for condonation of delay.

6. So far as variance in the date of presentation of appeal and the date of the notarising is concerned, it appears to be a typographical mistake because on 16.04.2017 application for certified copy was also not made. Therefore, this argument has no force.

7. In view of above, the applicant has made out sufficient cause for the condonation of delay. Application is allowed. Delay is condoned. Appeal be registered if it is fit for registration. Learned counsel Shri Patni states that he waives service of notice of appeal.

[M.G. SEWLIKAR, J.]