

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CIVIL APPLICATION NO.6021 OF 2015
IN SAST/13120/2014

SHAFI YAKUB PATHAN AND OTHERS
VERSUS
AKBAR RAMJAN PATHAN DIED THR. LRS. NASIR AKBAR PATHAN AND
OTHERS

...
Mr. R. B. Narwade Patil, Advocate for applicants.
Mr. R. R. Karpe, Advocate for respondent Nos.2 and 4.
...

CORAM : SMT. VIBHA KANKANWADI, J.

Reserved on : 04.08.2021

Pronounced on : 24.08.2021

ORDER :-

. Present application has been filed for getting the delay of 1649 days condoned in filing Second Appeal.

2. Applicants are the original plaintiffs, who had filed Regular Civil Suit No.99 of 2001 for declaration and injunction and they were the defendants in Regular Civil Suit No.193 of 1986, which was filed against them for declaration and consequential relief of injunction by present respondents. The suits were filed before the learned Joint Civil Judge Junior Division, Shrigonda. Regular Civil Suit No.193 of 1986 was dismissed and Regular Civil Suit No.99 of 2001 was decreed on

19.12.2005. The defendants in Regular Civil Suit No.99 of 2001 and the plaintiffs in Regular Civil Suit No.193 of 1986 filed two separate appeals i.e. Regular Civil Appeal No.47 of 2006 and Regular Civil Appeal No.48 of 2006 before the learned District Court, Ahmednagar. Both the appeals were heard by learned District Judge-5 and by common judgment, Regular Civil Appeal No.47 of 2006 was dismissed, however, Regular Civil Appeal No.48 of 2006 was allowed. The judgment and decree passed in Regular Civil Suit No.99 of 2001 on 19.12.2005 was set aside. The said suit was dismissed and, therefore, present applicants intend to challenge the decree of the learned first Appellate Judge dismissing their suit, however, there is delay as aforesaid.

3. Heard learned Advocate Mr. R. B. Narwade Patil for the applicants and learned Advocate Mr. R. R. Karpe for respondent Nos.2 and 4.

4. It has been vehemently submitted on behalf of applicants that the judgments were pronounced on 20.07.2010 and they had applied for certified copies on 23.07.2010. They received it on 11.08.2010. Thereafter, applicant Nos.4 and 5 expired and, therefore, family was disturbed. They could not contact their Advocate. Thereafter, applicant No.1, who was looking after the matter, was frequently remaining ill due to disturbed family condition. They are poor labourers and due to

financial crisis, they could not arrange for the money to file second appeal. The delay is unintentional. Their vital rights are involved, as the learned Trial Judge had held them owner of the property and restrained the defendant from disturbing their possession, however, the learned First Appellate Court has reversed that decree. Liberal approach is required to be taken to condone the delay.

5. Learned Advocate for the applicants relied on the decision in *Improvement Trust, Ludhiana Vs. Ujagar Singh and Ors., (210 DGLS (SC) 407)*, wherein it has been observed that, “the Courts should not take hyper-technical approach for rejecting an application for condonation of delay. Attempt should always be made to allow the matter to be contested on merits rather than to throw it on such technicalities.” He further relied on the decision in *State of Nagaland Vs. Lipok AO, (2005 DGLS(SC) 311)*, wherein it has been observed that, “what counts is not the length of the delay but the sufficiency of the cause and shortness of the delay is one of the circumstances to be taken into account in using the discretion. Application under Section 5 of the Limitation Act are to be construed liberally so as to do substantial justice to the parties. Otherwise, it would deprive a party from approaching the justice.”

6. Per contra, learned Advocate for respondent Nos.2 to 4 submitted with the support of affidavit-in-reply filed on behalf of respondents, that no explanation is afforded to condone the delay. When the applicants had received certified copies on 11.08.2010, then they ought to have immediately approached this Court.

7. At the outset, it is to be noted that it appears that the learned Advocate for applicants has filed the application in haste or not on the basis of full information and that lacuna has not been tried to be removed since 2015 till today. It is only stated that applicant Nos.4 and 5 have expired. Neither their death certificates have been produced on record, nor the fill in the blank in respect of date of death in the title of the application has been filled. In the body of the application also, the date of death has not been given. It is merely stated that thereafter applicant Nos.4 and 5 died. The another ground that has been tried to be raised is illness of applicant No.1. Neither the specific ailment has been stated, nor it is supported by medical certificate. The application is as aforesaid very loosely drafted and it cannot be said that it is in any way explaining or elaborating the reason for the delay of 1649 days.

8. The ratio laid down in both the above said authorities cannot be relied, however, it is to be noted that in *Improvement Trust, Ludhiana*

(Supra), the delay was of only two months and in *State of Nagaland Vs. Ujagar Singh (Supra)*, it is only 57 days. Taking into consideration the duration of the delay, that was involved in the case, Hon'ble Supreme Court has taken the above said view and has stated in *State of Nagaland Vs. Ujagar Singh (Supra)*, that sufficiency of the cause would count the length of the delay. Here, the necessary particulars have not been pleaded, not supported by documentary evidence. When the matter is pending for about six years with no attempt on the part of the applicants to correct the mistakes, it shows the negligence on the part of the applicants. Further, it will not be out of place to mention here that applicants had filed Civil Application No.2286 of 2015 before this Court for setting aside Registrar's order dated 13.08.2014 i.e. even prior to the delay condonation was registered and it was only on stamp number. It appears that there was a conditional order passed by the learned Registrar (Judicial) refusing the registration of the appeal for non removal of office objections, then for getting that order passed by the learned Registrar (Judicial) dated 13.08.2014 also, there was delay of 170 days and, therefore, that application was filed. It was allowed by this Court on 27.02.2015 subject to deposit of cost of Rs.1000/-. If the delay is caused frequently, then it cannot be said that the party is in any way acting bonafidely. No proper much less sufficient reason has been

shown to exercise the discretion in favour of the applicants and to condone the delay. Application, therefore, stands rejected.

[SMT. VIBHA KANKANWADI, J.]

scm