

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

925 CIVIL APPLICATION NO.6624 OF 2020
IN SAST/15759/2020

SHAIKH RAHIM SHAIKH NANHU LRS SK. AJIM LRS SHAIKH AJIJ AND
OTHERS
VERSUS
SITARAM SHANKAR MORE LRS RAKHUMANBAI AND OTHERS

...
Advocate for Applicants : Mr. Bhadgaonkar Umesh A.
Advocate for Respondent Nos.1a to 1f : Mr. Anant Devakate
...

CORAM : SMT. VIBHA KANKANWADI, J.

DATE : 10.08.2021

ORDER :-

. Pursis has been filed by the learned Advocate for the applicants on 09.08.2021, which is not marked as Exhibit-a stating that respondent No.1-G has expired. He was unmarried and the other heirs of original respondent are already on record.

2. Necessary amendment be carried out by the applicants immediately.

3. Present application has been filed for getting the delay of 273 days condoned in filing second appeal.

4. Heard learned Advocate Mr. U. A. Bhadgaonkar for the applicants and learned Advocate Mr. A. R. Devkate for respondent Nos.1-A to 1F.

5. Present applicants are original defendants and present respondents are original plaintiffs. The respondents had filed Regular Civil Suit No.04 of 2001 before the learned Joint Civil Judge Junior Division, Kannad, Dist. Aurangabad for specific performance of the contract, recovery of possession and perpetual injunction. The said suit came to be decreed on 29.12.2014. Present appellants filed Regular Civil Appeal No.68 of 2015 before the learned District Court, Aurangabad, which has been heard by learned District Judge-1 and the said appeal was dismissed on 18.03.2019. The original defendants want to file second appeal, however, there is delay 273 days.

6. It has been contended that applicant No.1D – Shaikh Husain Shaikh Ahmed was looking after the case on behalf of all the applicants. It is stated that all the applicants are not educated persons, however, applicant No.1D expired on 26.11.2019. After his death, the other applicants are not aware about the decision in the appeal. It is stated that son of applicant No.1D had communication with the Advocate stating that his father is no more. At that time, he came to know about the dismissal of the appeal.

7. Learned Advocate for the applicants submits that there is reasonable ground to condone the delay, however, learned Advocate holding for learned Advocate Mr. Devkate for respondent Nos.1A to 1F submits that whatever reasons have been given cannot be said to be sufficient much less reasonable.

8. At the outset, it is to be noted that the judgment and decree was passed by the learned first Appellate Court on 18.03.2019. At that time, applicant No.1D was very much alive. He expired about 10 months after the decision by the first Appellate Court. There is absolutely no reason stated regarding why none of the applicants were in contact with the Advocate from 18.03.2019 till 26.11.2019. This is equally applicable to applicant No.1D. Important point to be noted is that the applicants have not come with the case that after the decision by the first Appellate Court, the Advocate who was representing the applicants, had not informed about the decision to applicants, especially applicant No.1D. Therefore, there is absolutely no reason given explaining the 10 months those have been consumed. Whatever reason that has been tried to be given after death of applicant No.1D, that is also very much vague. It is stated that on one day, the son of applicant No.1D communicated the fact of death of his father to the Advocate. That date has not been mentioned and it appears that it is intentional. When the son was

knowing about pendency of the appeal, then he ought to have immediately gone to the Advocate.

9. Even though the applicants have not given a proper reason, yet a fact is required to be noted that the suit was for specific performance of contract. It was contended by the plaintiffs that two Gunthas of land in village Kannad was agreed to be sold for consideration of Rs.600/- and it is stated that the said agreement had taken place on 26.04.1982. That fact was denied by the defendants. Since the rights in the immovable property are involved and some of the other appellants are ladies and most of them are either agriculturists or labourers, by taking lenient view, the delay deserves to be condoned. Application deserves to be allowed, however, the inconvenience that would be caused to the respondents deserve to be compensated in terms of money. Only respondent Nos.1A to 1F have remained present and the statement has been made that respondent Nos.2 to 8 are the formal parties. Hence, the following order :-

ORDER

(I) Application stands allowed.

(II) The delay of 273 days caused in filing second appeal stands condoned, subject to deposit of cost of Rs.12,000/- in this Court

within a period of 15 days from today.

(III) After the deposit of cost amount, registry to verify and register the second appeal.

(IV) The amount be disbursed to respondent Nos.1A to 1F equally.

[SMT. VIBHA KANKANWADI, J.]

scm