

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

917 CIVIL APPLICATION NO.1037 OF 2021
IN SAST/18424/2020

ABASAHEB BHANUDAS THAKUR

VERSUS

GOVIND RAMBHAU NARWADE AND OTHERS

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Mr. R.K. Jadhavar, Advocate for the applicant

Mr. V.V. Bhavthankar, Advocate for respondent Nos.1 to 3

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CORAM : SMT. VIBHA KANKANWADI, J.

DATE : 01st OCTOBER, 2021

PER COURT :

1 Present application has been filed initially for getting delay of 283 days condoned in filing Second Appeal, however, it appears that the office calculated the delay at 80 days and accordingly the correction has been made.

2 Present applicant is the original plaintiff, who had filed suit for redemption of mortgage and possession before Joint Civil Judge Junior Division, Ambajogai. The said suit came to be dismissed on 07.02.2013. He preferred Regular Civil Appeal No.27/2013 before learned District Judge-1,

Ambejogai, Dist. Beed. The said appeal has been dismissed on 26.09.2019. The applicant intends to file Second Appeal, however, there is delay.

3 Learned Advocate for the applicant submitted that since the applicant is aged 70, suffering from diabetes and blood pressure, could not approach this Court within limitation. He prayed for condonation of delay by taking liberal view.

4 Reply has been filed by the respondents stating that though the appeal was decided on 26.09.2019, the present applicant applied for the certified copies on 22.11.2019 and there is no explanation for the delay caused in filing application for certified copies. Further, the Second Appeal ought to have been filed on or before 22.02.2020, however, it has been filed on 05.10.2020. Therefore, the delay has not been properly explained. Learned Advocate for the respondents made submissions in consonance with the reply.

5 It appears that calculation of period of limitation by this Court is wrong. It is to be noted that the First Appellate Court decided the matter on 26.09.2019. The period of limitation to file Second Appeal on 90 days would have started from the next date of the pronouncement of the Judgment in the said appeal and the period required for obtaining the certified copies would

have been allowed to be exempted. However, in this case, the certified copies were applied on 22.11.2019 and on the same day those copies were delivered to the appellant. At the most, the said one day may be exempted. In fact, there is no explanation for the delay caused from 27.09.2019 to 21.11.2019. Further, the present appeal could have been filed around 23.02.2020 but it has been filed on 05.10.2020. It is to be noted that the present applicant cannot take benefit of the decision by the Hon'ble Apex Court for extension of period of limitation, as the period of limitation for the applicant to file the appeal had come to an end before the Lock-down was declared and, therefore, calculation of delay that appears to have been made earlier i.e. 283 days appears to be correct, but still the reason that has been mentioned by the applicant is same.

6 The applicant is a 70 years old person, agriculturist and a pensioner. He had filed suit for redemption of mortgage, that is, claiming the right in immovable property and, therefore, liberal view is taken taking into consideration the duration of the delay. The inconvenience that would be caused to the respondents can be compensated in terms of money. Hence, following order.

ORDER

1 The application stands allowed.

2 The delay caused in filing Second Appeal stands condoned, subject to deposit of costs of Rs.9,000/- (Rupees Nine Thousand only), within a period of one month from today.

3 After the deposit of the amount, Second Appeal be verified and registered by the registry and the costs amount be distributed to the respondents, equally.

(Smt. Vibha Kankanwadi, J.)

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