

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

CIVIL REVISION APPLICATION NO.74 OF 2021

Rukhmeshchandra Hemchand Mishra,
Age : 62 years, Occ. Business,
r/o. Plot no.1, Raj Nagar,
Bansilal Nagar, Aurangabad

..Applicant

Vs.

1. Kesarbai w/o. Indalsingh Dangar
 2. Sukhmanbai w/o. Bahulal Lalsote
 3. Zumberbai w/o. Jaisingh Dangar
 4. Supdabai w/o. Kapurchand Rajalwad
 5. Tahsildar (Phulambri)
 6. Collector, Collector Office, Aurangabad
- ..Respondents

Mr.S.R.Nehri with Mr.N.S.Muthiyan, Advocate for applicant

**CORAM : R.G. AVACHAT, J.
RESERVED ON : NOVEMBER 30, 2021
PRONOUNCED ON : DECEMBER 02, 2021**

ORDER :-

Heard.

2. The challenge in this Revision Application is to the order dated 12.08.2021 passed by learned District Judge-11, Aurangabad, in Civil Miscellaneous Application No.441 of 2012. Vide impugned order, delay of 4 years, 2 months and 29 days in filing the Appeal, came to be condoned. The applicant herein is original defendant in a suit,

being Regular Civil Suit No.1000 of 2004 (respondent no.1 in Civil Miscellaneous Application No.441 of 2011).

3. The facts giving rise to the present application are as under :-

Respondent nos.1 and 2 herein (sisters) filed the suit (1000 of 2004) for specific performance of agreement for sale of agricultural land, particulars described in the plaint. The agreement for sale was said to have been executed by respondent nos.3 and 4. It was the case of respondent nos.1 and 2/plaintiffs that the land was agreed to be sold for a consideration of Rs.61,000/-. A sum of Rs.56,000/- was paid as earnest money. Possession of the suit land was said to have been handed over to respondent nos.1 and 2/plaintiffs. The applicant herein claims to be a third party purchaser (bona fide purchaser for value without notice of the agreement for sale of the suit land). The suit (1000 of 2004) was filed assuming the plaintiffs, being women, to have been exempted from payment of court fees. On appearance of the applicant herein in response to the suit summons, an application was moved for rejection of the plaint on the ground contained in Order VII Rule 11(c) of the Code of Civil Procedure, i.e., although the suit has been

properly valued, the plaint was written upon paper insufficiently stamped and the plaintiffs, on being required by the Court to supply the requisite stamp-paper within a time to be fixed by the Court, failed to do so.

4. The trial Court rejected the plaint on the aforestated ground. The plaintiffs, therefore, preferred an application for rejection of plaint dated 16.06.2008. Said application was dismissed on 17.08.2013.

5. Pending the said application, the plaintiffs (respondent nos.1 and 2 herein) filed appeal with an application for condonation of delay. It was registered as MARJI No.441 of 2012. The appellate Court was pleased to allow said application with some costs. The applicant herein challenged the said order before this Court in Civil Revision Application (72 of 2016). Said application was allowed remanding the matter back to the District Court for hearing afresh. Learned Judge, after having given the parties, an opportunity of hearing, allowed said application vide his order dated 12.08.2021. Said order is under challenge herein.

6. It was the case of the plaintiffs (respondent nos.1 and 2 herein) before the District Court that the plaintiffs were illiterate

women. They believed the Advocate representing them in the suit. The Advocate concerned, on one or the other pretext, kept them informing that the suit was not ripe for hearing. Once in 2010, the concerned Advocate had called them to Aurangabad and obtained their thumb impression on blank paper. It was, later on, realised that the concerned Advocate had moved an application for setting aside the order of rejection of plaint. Pending the said application, it was realised that preferring an application to the very Court, was not the remedy under law. The plaintiffs, therefore, changed their Advocate and preferred the appeal against the order rejecting the plaint. In short, the plaintiffs put entire blame on their Advocate. It was also their case that the husband of plaintiff no.1 was personally looking after the proceedings in the Court. He was, therefore, examined as a witness in C.M.A. No.441 of 2012. He reiterated the averments in the plaint. Learned District Judge, vide impugned judgment and order, condoned the delay in preferring an appeal against the judgment and order dated 16.08.2008 rejecting the plaint for the ground stated herein above. Learned District Judge gave the following reasons in support of his impugned order:-

“21. An illiterate villager mostly believes in his advocate for prosecution of his cause and thus, it

appears that the same happened here when the applicants or their representative A.W. 1 Indalsing blindly believed in their advocate and did as the advocate directed and consequently, lapsed period and could not prefer an appeal against the order of rejection of plaint. It shows their innocence. Thus, inaction on the part of advocate and wasting the time period in the same would be a sufficient cause for the applicants for the remaining period till filing of the present application for condonation of delay. Reliance is placed on the ratio in the authorities relied on by the applicants, especially, the cases of Randhir Singh, Rafiq, Smt. Lachi, Gulabchand, Chandramani etc.

22. *Though ignorance of law is of no excuse etc. is the principle of law, understanding the most technical and legal effect of “rejection of plaint”, and dragging with an incorrect legal recourse adopted by the concerned advocate and wasting time in prosecuting wrong litigation and that too, without having knowledge about nature and incorrectness thereof would also be a sufficient cause for condonation of delay. Thus, for such incompetency of the concerned advocate, and an illiterate lady litigants should not suffer. It is not a sympathetic view taken by this Court but it is the view of this Court that where a legal practitioner could miss the way it cannot be expected that such illiterate lady litigants or their representative could do otherwise, but to follow him.*

23. *Thus, the reasons given by the applicants that they kept believing on their advocate and they came to know at the end that they were on wrong track would be the sufficient causes for condonation of entire delay. The explanation given by them is proper and sufficient. Thus, it is a fit case to adopt justice oriented approach to condone delay. They are not guilty of gross negligence and laches. At the most, they would be guilty of blind faith and belief on their advocate and therefore, delay can be condoned and thus, prejudice if any, is caused to the respondents can be compensated in terms of costs. It is not a case of*

lack of bona fides or gross negligence as tried to be suggested on behalf of the respondent.

24. Though, it is expected that the parties to be vigilant and sensitive towards their litigation in the Court, it is not expected that every time they should suspect their advocate. Even, it is a gross root level truth but equally an unfortunate fact that most of the illiterate litigants are kept ill informed about progress of their litigation by their advocates for the reasons best known to them. Even, such litigants have no courage to raise voice against the same by adopting an action permissible under law.

*25. The applicants herein have sufficiently pleaded and shown the reason for delay. Thus, for omission on the part of the concerned advocate to inform them and call at the Court to pay court fees in time, and further unknowingly adopting a wrong remedy and prosecuting it through advocate would be sufficient causes for condonation of delay. Accordingly, point no.1 is answered in affirmative. The delay is required to be condoned in order to allow the applicants to contest their cause on merits. The prejudice by lapse of time which may be caused to the respondent nos.2 and 3 can be compensated in terms of costs. It is also necessary to decide the appeal in time bound manner.
.....”*

7. Learned counsel for the applicant would submit that it was a case of gross negligence and laches. The plaintiffs had not relied on Section 14 of the Limitation Act, before learned District Judge. A few statements made by plaintiff's witness in his evidence were also brought to the notice of this Court, to submit that the blame would entirely lie on the plaintiffs. It was in his evidence that

he had kept contacting the concerned Advocate, who would, in turn, informed him the suit to have not been ripe for hearing.

8. This being a Revision Application, the Court is not expected to appreciate the factual matrix. On hearing learned counsel for the applicants and after going through the impugned order, this Court is of the view that learned District Judge has rightly exercised his discretion in condoning the delay in preferring appeal against the order rejecting the plaint. The order impugned could not be termed to be perverse. In the case of **Collector, Land Acquisition, Anantnag and anr. Vs. Mst. Katiji and ors., AIR 1987 SC 1353**, it has been observed that the Courts should adopt liberal approach in condoning delay. It has further been observed as under :-

3. The legislature has conferred the power to condone delay by enacting [Section 5](#) of the Indian Limitation Act of 1963 in order to enable the Courts to do substantial justice to parties by disposing of matters on 'merits'. The expression "sufficient cause" employed by the legislature is adequately elastic to enable the courts to apply the law in a meaningful manner which subserves the ends of justice that being the life-purpose for the existence of the institution of Courts. It is common knowledge that this Court has been making a justifiably liberal approach in matters instituted in this Court. But the message does not appear to have percolated down to all the other Courts in the hierarchy. And such a liberal approach is adopted on principle as it is realized that:-

1. Ordinarily a litigant does not stand to benefit by lodging an appeal late.

2. Refusing to condone delay can result in a meritorious matter being thrown out at the very threshold and cause of justice being defeated. As against this when delay is condoned the highest that can happen is that a cause would be decided on merits after hearing the parties.

3. "Every day's delay must be explained" does not mean that a pedantic approach should be made. Why not every hour's delay, every second's delay? The doctrine must be applied in a rational common sense pragmatic manner.

4. When substantial justice and technical considerations are pitted against each other, cause of substantial justice deserves to be preferred for the other side cannot claim to have vested right in injustice being done because of a non-deliberate delay.

5. There is no presumption that delay is occasioned deliberately, or on account of culpable negligence, or on account of mala fides. A litigant does not stand to benefit by resorting to delay. In fact he runs a serious risk.

6. It must be grasped that judiciary is respected not on account of its power to legalize injustice on technical grounds but because it is capable of removing injustice and is expected to do so."

9. In short, it was the suit filed by two illiterate women for specific performance of agreement of sale of agricultural land. They claimed to have paid substantial consideration amount. Possession of the suit land has been claimed to have been obtained under

agreement for sale. The suit was filed assuming the plaintiffs to have been exempted from payment of Court fee, although they were ready and willing to pay the Court fee. The Advocate representing them in the suit did not inform them the progress of the suit. The plaintiff, ultimately, came to be rejected. The applicant is not original vendor. He claimed to have purchased the suit land. He wants to have the suit nipped in the bud.

10. Learned District Judge condoned the delay in exercise of his discretionary jurisdiction. In the facts and circumstances of the case, no case is made out for even issuance of notice. The Revision Application, therefore, fails. The same is dismissed.

[R.G. AVACHAT, J.]

KBP