

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CIVIL APPLICATION NO.11874 OF 2019
IN SAST/23607/2019

MUNJAJI S/O RAMRAO BHAROSE AND ORS
VERSUS
DR. SUNIL S/O CHOTHMAL CHANDAK

.....

Mr. R. N. Dhorde, Senior Counsel i/b Mr. R. J. Nirmal, Advocate for applicants.

Mr. S. S. Rathi, Advocate for the respondent.

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WITH
CA/11875/2019 IN SAST/23592/2019

MUNJAJI RAMRAO BHAROSE AND OTHERS
VERSUS
RANGANATH S/O KESHAVRAO BHAROSE AND OTHERS

.....

Mr. R. N. Dhorde, Senior Counsel i/b Mr. R. J. Nirmal, Advocate for applicants.

Mr. P. N. Kalani, Advocate for respondent Nos.1 to 4.

Mr. S. S. Rathi, Advocate for Respondent Nos.5/1 and 5/4 and 6.

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CORAM : SMT. VIBHA KANKANWADI, J.

Reserved on : 26.07.2021

Pronounced on : 04.08.2021

ORDER :-

. Both the applications have been filed for condoning the delay of 282 days in filing second appeals respectively.

2. Heard learned Senior Counsel Mr. R. N. Dhorde instructed by learned Advocate Mr. R. J. Nirmal for applicants, learned Advocate Mr. P. N. Kalani for respondent Nos.1 to 4 in Civil Application No.11875 of

2019 and learned Advocate Mr. S. S. Rathi for sole respondent in Civil Application No.11874 of 2019 and for respondent Nos.5/1, 5/4 and 6 in Civil Application Nos.11875 of 2019.

3. It has been vehemently submitted on behalf of the applicants that the respondent in Civil Application No.11874 of 2019 is the original plaintiff, who had filed Regular Civil Suit No.82 of 2008 for recovery of possession, which came to be decreed on 04.09.2014 and applicants in Civil Application No.11875 of 2019 are original plaintiffs, who had filed Regular Civil Suit No.73 of 2009 for declaration and injunction, which came to be dismissed on 03.08.2012. The present applicants preferred Regular Civil Appeal Nos.136 of 2014 and 180 of 2012 respectively challenging the respective judgment and decrees. However, both the appeals have been dismissed. Now, they want to file second appeals, however, there is delay of 282 days. It was the contention of the respondent in Civil Application No.11874 of 2019 i.e. original plaintiff that the suit property was purchased by way of registered sale deed and by way of family partition, the suit property came to the share of plaintiff in Regular Civil Suit No.82 of 2008. Plaintiff contended that the defendants have encroached upon his land to the extent of 42 R and, therefore, he sought possession in that, whereas in Regular Civil Suit No.73 of 2009, it was contended that the plaintiffs' possession over the

suit land has been obstructed by the defendants. Vital rights of the defendants are involved who had resisted the claim of the plaintiffs. After the two separate judgments were pronounced on 23.07.2018, the applicants applied for the certified copies and got those copies on 21.08.2018. The applicants are poor and could not arrange for the amount of the Court fees. The delay that has been caused is unintentional and, therefore, taking into consideration the liberal view that is required to be adopted, the delay deserves to be condoned.

4. Respondent sole in Civil Application No.11874 of 2019 and Respondent No.6 in Civil Application No.11875 of 2019 objected for grant of any relief to the applicants by filing affidavit-in-reply. Learned Advocate appearing for the respective respondents, based on the instructions which he had received along with the affidavit-in-reply, submitted that the applicants have not shown reasonable or sufficient ground to condone the delay. There is no justification as to why the certified copies were applied belatedly. Though the applicants are contending that they are poor persons, yet, it can be seen that they were represented by Advocate of their choice respectively at all the stages. It was contended that the applicants could not arrange for the Court fees, but it is to be noted that the Court fee that was required to be paid on such matters was only Rs.200/- each. It cannot be stated that the

plaintiffs cannot be part with that much amount for two matters only. There is absolutely no reasonable ground as the applicants have failed to explain delay of each and every days.

5. At the outset, it can be said that the applications for condonation of delay are required to be considered liberally and, therefore, it is now required to be seen as to whether such circumstances have been shown which would allow this Court to use the discretion in favour of the applicants. The delay of 282 days may not be inordinate at times, but it is required to be seen as to whether it is unintentional. Perusal of the record would show that though the judgments were pronounced on 23.07.2018, the application for certified copy was given on 13.08.2018 itself and he had received the copies on 21.08.2018. That means, it was within limitation that was prescribed by statute for preferring an appeal. However, thereafter, till 30.07.2019, the second appeal was not filed. Now, in order to explain that, it is stated that due to financial crisis, they could not take it up. All the four applicants are agriculturists and applicant Nos.3 and 4 are doing household works. It has not been brought on record either by the applicants or by the respondents as to how much land the applicants have with them, which could give them the source of income. The applicants have not come with the case that they were not having any knowledge about passing of the decree. When

they had the knowledge about the decision in the appeals and they had also received the certified copies within limitation, in the normal course, it would have been accepted that they should file the appeal immediately. Now, it can be seen that both the appeals required only Rs.200/- each as Court fee. It cannot be believed that the applicants were short of even that much amount. However, Court fees is not the alone expenditure that is required to be considered, it would also include the Advocate's fees and other expenses those are required for the preparation of the second appeals. So the contention of the applicants cannot be brushed out altogether. The applicants are coming from a rural background. They are from village and, therefore, by taking liberal approach, the applications deserve to be allowed. Accordingly, applications are allowed and disposed of, subject to deposit of cost of Rs.5,000/- in each of the matter in this Court within a period of two weeks from today.

6. After the amount is deposited, registry to verify and register the second appeals and place them for further consideration on 23.08.2021.

7. Respondent/respondents are at liberty to withdraw the amount deposited by the applicants in respective matters.

[SMT. VIBHA KANKANWADI, J.]

scm