

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CIVIL APPLICATION NO.775 OF 2020
IN SAST/23877/2019

LATE MADHUKAR YASHWANT HARDE THR. HIS LRS. SUMAN
MADHUKAR HARDE AND ANR.
VERSUS
DINKAR YASHWANT HARDE AND OTHERS

...
Mr. A. D. Ostwal, Advocate for applicants.
Mr. S. D. Munde h/f Mr. R. R. Karpe for respondent Nos.1 and 2.
...

CORAM : SMT. VIBHA KANKANWADI, J.

Reserved on : 26.08.2021

Pronounced on : 15.09.2021

ORDER :-

. Present application has been filed for getting the delay of 824 days condoned in filing second appeal.

2. Present applicants are the original plaintiffs, who had filed Special Civil Suit No.108 of 1998 before learned Civil Judge Senior Division, Shrirampur for partition, separate possession and declaration. The said suit was dismissed on 03.03.2008. The said decree was challenged in Regular Civil Appeal No.38 of 2015 (Old Regular Civil Appeal No.32 of 2008) before learned District Judge-1, Newasa. The said appeal came to be dismissed on 24.11.2017. The plaintiffs intend to file second appeal,

however, as aforesaid, there is delay of 824 days. Hence, present application.

3. Heard learned Advocate Mr. A. D. Ostwal for applicants and learned Advocate Mr. S. D. Munde holding for learned Advocate Mr. R. R. Karpe for respondent Nos.1 and 3.

4. Learned Advocate for applicants has relied on the decision in *Sonerao Sadashivrao Patil and Another Vs. Godawaribai w/o Laxmansingh Gahirewar and others*, [1999 (2) Mh.L.J. 272] and *Bhivchandra Shankar More Vs. Balu Gangaram More and others*, [(2019) 6 SCC 387], wherein this Court as well as Hon'ble Apex Court have stated that liberal approach is required to be taken while dealing with applications for condonation of delay. Further, the Hon'ble Supreme Court has held that rules of limitation not meant to destroy rights of parties. They are meant to see that parties do not resort to dilatory tactics but seek remedy promptly.

5. Per contra, the learned Advocate appearing for respondent Nos.1 and 3 relied on the decision of this Court in *Shafi Yakub Pathan and others Vs. Akbar Ramjan Pathan Died Thr. Lrs. Nasir Akbar Pathan and others*, Civil Application No.6021 of 2015 decided on 24.08.2021, wherein this Court had refused to condone the delay of 1649 days.

Further, he has relied on the decision in *Vithal s/o Dharmaji Potalwad (D) through LR. And Ors. Vs. Akrambee w/o Abdul Raheman (D) through LR. And others, [2014 (6) ALL MR 392]*, wherein the facts on record would show that every attempt made by appellant to protract things, to delay execution and to defeat claim of respondents, the delay was not condoned by this Court. Further, in *Chandrakant s/o Laxman Kulbhaiyya and another Vs. State of Maharashtra and others, [2015 (2) Mh.L.J. 323]*, it has been observed by this Court that, “party seeking condonation has to satisfy the Court about existence of sufficient cause for not preferring appeal/application. Existence of sufficient cause is condition precedent for exercise of discretion by Court.”

6. It is to be noted that applicants are contending that since applicant No.1A is a widow and aged 82 years old suffering from various ailments, could not approach the Court immediately. Applicant No.1B is the son of applicant No.1A. Applicant No.1A had suffered paralytic attack about 1 ½ years back and she had also got her leg fractured. Applicant No.1B is in service and stationed at Ahmednagar and applicant No.2 is retired pensioner, who resides at Pune. Applicant No.2 is also suffering from various ailments, which prevented them from approaching the Advocate in time to file appeal. Applicant No.1B, who is in service was transferred to Devgad, Dist. Sindhurg and then to Yeola,

Dist. Nashik. The learned Advocate for respondent Nos.1 and 3 submits that these are not sufficient reasons to condone the delay of 824 days.

7. As regards the medical papers of applicant No.1A is concerned, they have not been produced on record to support the contention that she had paralytic attack and had also fractured her leg. But taking into consideration her age as 82 years that is also one of the reason which would have prevented her from approaching the Court in time. The medical papers have been produced in respect of ailment of applicant No.2. In fact, they are various tests those were conducted on him periodically. It is including the ultrasound of abdomen. Definitely, liberal approach is required to be taken as stated in ***Sonerao Sadashiv Patil (Supra)*** and ***Bhivchandra Shankar More (Supra)***. As regards the decisions by this Court relied by respondent Nos.1 and 3 are concerned, on the facts of the case and after taking note of all the other decisions of this Court as well as Hon'ble Apex Court, it was held that the sufficient ground has not been shown to condone the delay therein. However, here, the age of applicant No.1A is definitely required to be considered. So also, applicant No.2 is 75 years old person. Applicant No.1B is aged 56 years, but then he has stated on oath that though he was stationed at Ahmednagar, he was transferred to Devgad, Dist. Sindhurg as well as Yeola, Dist. Nashik in the meantime. Therefore, sufficient grounds have

been shown to condone the delay, however, the inconvenience that would be caused to the respondents deserves to be compensated. Respondent No.2 though served, has not appeared and, therefore, she need not be compensated. Only respondent Nos.1 and 3 deserve to be compensated. Hence, the following order :-

ORDER

- I) Application stands allowed.
- II) The delay caused in filing second appeal stands condoned, subject to deposit of cost of Rs.10,000/- each for respondent Nos.1 and 3 within a period of one month from today.
- III) After the amount is deposited, registry to verify and register the second appeal.
- IV) The amount so deposited by applicants be given to respondent Nos.1 and 3 accordingly.

[SMT. VIBHA KANKANWADI, J.]

scm