

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

24 CIVIL APPLICATION NO.789 OF 2013
IN SAST/26368/2012

BHIVRAO RANGNATH KSHIRSAGAR

VERSUS

VINAYAK BHIVRAO KSHIRSAGAR AND ANR

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Mr. R.B. Deshmukh, Advocate for the applicant

Mr. S.V. Natu, Advocate for the respondent No.1

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CORAM : SMT. VIBHA KANKANWADI, J.

DATE : 02nd AUGUST, 2021.

PER COURT :

1 Present application has been filed for getting delay of 1265 days condoned in filing Second Appeal.

2 Heard learned Advocate Mr. R.B. Deshmukh for the applicant and learned Advocate Mr. S.V. Natu for the respondent No.1.

3 It has been vehemently submitted on behalf of the applicant that the applicant had filed appeal bearing Regular Civil Appeal No.99/2008 before District Court, Latur, challenging the Judgment and Decree passed by learned Civil Judge Junior Division, Latur in Regular Civil Suit No.579/2005.

The suit was for declaration and injunction and it was decreed against him. After the appeal was filed, the learned Advocate representing him assured him that he will take all the steps and it will take at least about two years for final hearing of the appeal. Learned Advocate had undertaken that he would inform the result of the appeal to him. However, no intimation was given by the learned Advocate. Applicant got the information about dismissal of his appeal when respondent No.1 filed execution petition. Therefore, there is reasonable and sufficient ground to condone the delay. Vital rights of the applicant are involved, as the subject-matter of the suit is immovable property. He prayed for condonation of delay.

4 Per contra, the learned Advocate appearing for the respondent No.1 submitted that the delay is inordinate and no reasonable ground has been shown.

5 At the outset, it can be seen that it is not the only job of the appellant to hand over the entire documents to his Advocate, but it is his duty also to be in contact with the Advocate and get the information about various stages. Except his bare words, there is nothing produced to show that no intimation was given nor the Advocate was in contact with the applicant. Therefore, there appears to be no reasonable ground to condone the delay.

6 Further, the documents on record would show that the present respondents had filed the said suit specifically contending that they are owners and possessors of land bearing Gat No.207, to the extent of 01 H 41 R, from south-west corner, situated at village Morwad, Tq. Renapur, Dist. Latur. They had also contended that earlier plaintiff No.1 had filed suit bearing R.C.S. No.635/1991 for perpetual injunction against the present applicant. That suit was compromised and it was reiterated that there was partition between plaintiffs and co-owner Ratan Jadhav. According to the plaintiffs, the present appellant had no concern with the suit land; yet, he was obstructing their possession. In his written statement the defendant i.e. present appellant admitted the relationship with the plaintiffs and also the fact of compromise decree passed in Regular Civil Suit No.635/1991. Defendant admitted the title and possession of the plaintiffs over the suit land. But then averred that the plaintiffs have not properly described the suit land. He then denied oral partition and the fact that in that partition suit, land was allotted to plaintiff No.1. Thus, it appears that the present appellant at one breath admitted the title as well as possession of the plaintiffs and at another breath he was challenging the title through oral partition. When the title of the plaintiffs got confirmed once again through the compromise decree, both the Courts were justified in holding that the plaintiffs had title over the suit land and they are the possessors. It was held

by both the Courts below that the defendant is obstructing the peaceful possession of the plaintiffs over the suit land, and therefore, he will have to be permanently restrained. When the facts are properly appreciated, as major part of the same appears to have been admitted by the present appellant itself, both the Courts below have taken a consistent and concurrent view, no substantial question of law appears to be arising in this case, and therefore, there is no point for consideration of delay application. On both counts the contention for the claim of the applicant should fail. Hence, the application stands rejected.

(Smt. Vibha Kankanwadi, J.)

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