

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

**CIVIL APPLICATION NO.679 OF 2017
IN SAST/26342/2016**

SUBHASH BHASKAR SONAWANE AND OTHERS
VERSUS
KAUSHABAI RAYBHAN GUNJAL AND ANOTHER

.....
Advocate of Applicants : Mr. A. A. Yadkikar and Mr. S.S.Jawale
Advocate for Respondents : Mr. S. S. Chapalgaonkar
.....

**WITH
CIVIL APPLICATION NO.680 OF 2017
IN SAST/26342/2016**

.....
**CORAM : SMT.VIBHA KANKANWADI, J.
DATE : 06-08-2021.**

ORDER :

1. Present Civil Application No.679 of 2017 has been filed for getting the delay of 819 days condoned in filing the second appeal.
2. Present applicants are the original defendants and present respondents are the original plaintiffs. Original plaintiffs had filed Regular Civil Suit No.255 of 2006 for permanent injunction. The said suit came to be decreed by learned 3rd Joint Civil Judge, Junior Division, Kopergaon on 30-06-2009. The present applicants were restrained from disturbing the possession of the plaintiffs over the suit

land. Original defendants then filed Regular Civil Appeal No.42 of 2009. The said appeal was dismissed by learned District Judge-1, Kopergaon Dist. Ahmednagar on 27-02-2014. They want to file a second appeal, however, there is a delay of 819 days, hence the present application.

3. Heard learned Advocate Mr. A. A. Yadkikar and S. S. Jawale for applicants and learned Advocate Mr. S. S. Chapalgaonkar for respondents.

4. It has been vehemently submitted on behalf of the applicants that though the decision was given by the learned First Appellate court on 27-09-2014, they were not having knowledge about the same. They were informed by their well-wisher in the first week of March 2016 that Regular Darkhast No.63 of 2015 is filed against them. Then they approached their Advocate to know about the progress of Appeal No.42 of 2009 and Regular Darkhast No.63 of 2015, at that time they came to know that the appeal has been dismissed. It is stated that they were hoping that their Advocate who was representing them before the First Appellate court would inform the decision but it has not happened. According to the applicants, they could not coordinate with the Advocate as they were

not having contact details of each other. They had hardly gone to the Court after filing the first appeal as they were fully relying on their Advocate. The applicants are also contending that they are illiterate and are very poor. The delay is unintentional and, therefore, deserves to be condoned. They have a good case on merits.

5. Affidavit-in-reply has been filed on behalf of the respondents. Learned Advocate for the respondents submitted that the applicants have not given sufficient much less reasonable ground to condone the huge delay of 819 days. Now they are intentionally saying that they were not having knowledge about the decision. They have not come with bonafide intention before this Court. In spite of having knowledge about the injunction that was imposed on them by the Trial Court, yet the applicants have sold 1 H 7 R land from suit land Gut No.84 to one Dipali Mahendra More on 05-03-2015. Though the applicants are contending that they are illiterate and layman, yet the actions of the applicants would show that they have smartly disposed of the portion of the suit property and they have the courage to disobey the orders of the Court. Now the applicants are taking disadvantage of the age of applicant No.2 and contending

that due to his ill-health, the matter could not be inquired into. In fact, he is the main person who has disposed of the property, therefore they deserve no sympathy at all.

6. It is to be noted that the delay of 819 days is definitely inordinate. If reasonable and sufficient ground is shown, then the duration of the delay need not be of any significance but whether the reason that has been given by the present applicants is sufficient and reasonable, is required to be seen. Here, the Trial Court had decreed the suit and the applicants were restrained from disturbing the possession of the plaintiffs over the suit lands. Gut No.84 and 83 situated at Malharwadi Tq. Kopergaon Dist. Ahmednagar was the suit property. They themselves had filed the Regular Civil Appeal No.42 of 2009 before the First Appellate Court and before its decision known to them (as they themselves are claiming ignorance about the decision), it can be seen that by sale deed dated 05-03-2015, the present applicant No.2 has sold land Gut No.83 admeasuring 1 H 7 R with 0.06 R barren, that is in all 1 H 13 R to one Dipali Mahendra More, copy of the said sale deed has been produced on record. The conduct of the applicants is therefore required to be considered. They have not come with clean hands

and at least when they were planning to dispose of the property, they would have taken care to see whether they can convey the title along with the possession of the suit property to the seller. The decision in the first appeal was prior to the said sale deed and now under the guise of a fact that they were informed by some well-wisher in the first week of March 2016 they came to know about the decision of the appeal, is an unbelievable fact.

7. The applicants are taking shelter of their illiteracy for getting the delay condoned. However, it is to be noted that even the present respondents/original plaintiffs are also illiterate. In fact, they are the only ladies and as against those ladies, the gents are putting excuse of their illiteracy, is unacceptable. Further, the advantage of this reason could have been given in ordinary circumstances if the opposite party would have been literate. Here, when the plaintiffs are also illiterate, the said reason cannot be said to be reasonable to condone the delay.

8. Why the applicants were not having the contact details of their Advocate has not been explained by them. They have not come with a case that the Advocate has changed his address or phone number etc. Equal duty is cast on the applicants to make an inquiry

regarding the progress of their matter. Another trend that is required to be noted here is that after considering many applications for condonation of delay, that one of the grounds that is always put forward for getting the delay condoned is that the Advocate has not communicated the decision to the applicants. In these matters, the poor Advocate on whom the blame is put is not before this Court. If this reason is taken as it is, then it would open a flood gate and each and every applicant who is coming belatedly to this Court would raise the same reason. By ignoring the equal responsibility of remaining in contact with the Advocate and getting the periodical inquiry from the Advocate. It is very easy to blame others by ignoring the responsibility that has been cast upon oneself. For the reasons stated, the applicants have not come before this Court with clean hands but they have suppressed the fact that they have already disposed of one of the suit land.

7. One more reason that has been tried to be placed on record is that applicant No.2 being an old age person and the other applicants who are his sons were busy in taking care of him could not approach this Court within limitation. The applicants have not produced on record any documentary evidence that the health of applicant No.2

was in such a condition that three sons were required to be around him all the time in these 819 days, this reason is unbelievable.

8. Therefore, taking into consideration the above reasons, no case is made out to condone the delay, hence the application stands rejected. Pending Civil Application No.680 of 2017 stands disposed of.

(SMT. VIBHA KANKANWADI)
JUDGE

vjg/-

GAWADE
VIRENDRA
J

Digitally signed
by GAWADE
VIRENDRA J
Date:
2021.09.06
16:49:21 +0530