

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

**918 CIVIL APPLICATION NO.4800 OF 2020
IN SAST/27651/2018**

**DIGAMBAR SAMBHAJI JADHAV
VERSUS
MEHRUNISSA BEGUM W/O SK. SALIM**

...

Mr. V.A. Dhakne, Advocate for the applicant
Mr. S.K. Shaikh, Advocate for the sole respondent

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CORAM : SMT. VIBHA KANKANWADI, J.

DATE : 15th SEPTEMBER, 2021.

ORDER :

1 Present application has been filed for getting delay of 494 days condoned in filing the Second Appeal. Present applicant is the original plaintiff, who had filed Regular Civil Suit No.14/2008 for declaration of ownership and recovery of possession. The said suit came to be dismissed by Joint Civil Judge Junior Division, Kinwat, Dist. Nanded on 20.02.2012. The appeal filed by the applicant i.e. Regular Civil Appeal No.80/2012 has been dismissed by learned District Judge-1, Nanded on 31.01.2017. The present applicant/appellant intends to file Second Appeal, however, there is delay, as aforesaid of 494 days. Hence, the present application.

2 The applicant is contending that he is poor and rustic labour, who is required to work on daily wages at different places wherever the work is available, for his livelihood, therefore, he was not able to visit his native place for about a year. Applicant came to know about the Judgment and order dated 21.01.2017 passed by the District Judge-1, Nanded in Regular Civil Appeal No.80/2012 on 10.01.2018 when he visited his native place after about one year and seen that the respondent is likely to construct RCC house on suit land. Thereafter he applied for certified copies of Judgment and order passed in Regular Civil Appeal No.80/2012 on 11.01.2018 and he received the copies on 29.01.2018. The applicant was not aware of legal provisions of filing Second Appeal before this Court, therefore, he approached one Advocate at Nanded for taking legal guidance on 02.02.2018, who advised him to get certified copies of Judgment and order dated 20.02.2012 passed in Regular Civil Suit No.14/2018 by Joint Civil Judge Junior Division, Kinwat. Thereafter, applicant applied for those certified copies on 09.02.2018 and he received the copies on 16.02.2018. Thereafter, he again approached said Advocate at Nanded seeking further guidance and assistance and said Advocate told him about the Court fees, filing charges of Second Appeal and Advocate fees. However, due to paucity of funds to prosecute the Second Appeal, the applicant was required to work on daily wages for almost five months for making arrangement of funds and

after earning necessary funds and collecting necessary documents, he approached Advocate at Aurangabad and filed the Second Appeal. The delay is unintentional and it is prayed that it be allowed.

3 Heard learned Advocate Mr. V.A. Dhakne for the applicant and learned Advocate Mr. S.K. Shaikh for the sole respondent.

4 Learned Advocate for the applicant submitted that though the First Appellate Court had pronounced the Judgment in Regular Civil Appeal No.80/2012 on 31.01.2017, the applicant came to know about the decision on 10.01.2018 when he visited his native place after about one year. Thereafter, he obtained the certified copies and approached the Advocate at Nanded. After considering the documents tendered by the applicant, the said Advocate at Nanded asked him to get more certified copies. Therefore, further time has been consumed to get the certified copies as well as making arrangement of funds for Court fees, filing charges, Advocate fees etc. The learned Advocate submitted that applicant is poor and rustic labour. Due to drought situation his financial position has become weak. This is also the ground for condonation of delay as he could not raise appropriate funds. Learned Advocate prayed that the delay be condoned.

5 Per contra, the learned Advocate for the respondent strongly

objected the application and submitted that the delay is inordinate and it has not been properly, much less sufficiently explained.

6 At the outset, if we consider the reasons those have been given in paragraph Nos.5 and 6, it is to be noted that applicant came to know about the decision of his appeal on 10.01.2018 when he had visited his native place after a time gap of one year, but he has not stated the places where he was working. He has merely stated that respondent is likely to construct RCC house on suit land, but no supporting documents are annexed. Further, after the certified copies were received on 16.02.2018 the Second Appeal has been filed on 06.09.2018, after almost six months. Now, as regards this second segment of the delay is concerned, the applicant has come with a case that after the certified copies were collected the Advocate at Nanded told him about Court fees, filing charges and Advocate fees and due to paucity of funds the applicant was required to work on daily wages for almost six months. The applicant has not stated the name of Advocate at Nanded to whom he sought guidance. He has also not explained as to why he could not get all the information at one stroke/visit. There should be no necessity to visit Advocate again and again for such work. Therefore, taking into consideration all these aspects, no reasonable ground, much less sufficient is shown to condone the delay.

7 Reliance can be placed on the decision of this Court in **Kamalbai w/o Narasaiyya Shrimal and another vs. Ganpat Vithalrao Gavare, 2006 SCC OnLine Bom 1126**, wherein it has been observed that -

“Delay cannot be condoned only because it is unintentional. So also, mere poverty cannot be a ground for condonation of delay.

The expression “sufficient cause” cannot be erased from Section 5 of the Limitation Act by adopting excessive liberal approach which would defeat the very purpose of Section 5. There must be some cause which can be termed as a sufficient one for the purpose of delay condonation.”

7.1 Further, reliance can be placed on the decision in **Patel Motibhai Naranbhai and another vs. Dinubhai Motibhai Patel and others, (1996) 2 SCC 585**, wherein it has been held by the Hon’ble Supreme Court that -

“Court should not come to the aid of a party where there has been unwarrantable delay in seeking the statutory remedy.”

8 As no sufficient and reasonable ground for condoning delay has been shown, application stands rejected.

(Smt. Vibha Kankanwadi, J.)