

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

907 CIVIL APPLICATION NO.13138 OF 2014
IN SAST/29390/2014

KHUSHALCHAND KISHANRAO MALI

VERSUS

SURYAKANT VINAYAK KHANDEKAR

...

Mr. Anand Chawre, Advocate for the applicant

Mr. A.M. Gaikwad, Advocate for the sole respondent

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CORAM : SMT. VIBHA KANKANWADI, J.

DATE : 31st AUGUST, 2021.

PER COURT :

1 Present application has been filed for getting delay of 622 days condoned in filing Second Appeal. Applicant is the original plaintiff, who had filed Regular Civil Suit No.575 of 2008 before 5th Joint Civil Judge Junior Division, Latur for possession and consequential reliefs. The said suit came to be dismissed on 24.04.2011. He challenged the said Judgment and Decree in Regular Civil Appeal No.115/2011. The appeal was heard by learned Adhoc District Judge-2, Latur and had dismissed on 28.11.2012. He wants to file Second Appeal, however, as aforesaid there is delay of 622 days. Hence,

present application under Section 5 of the Limitation Act.

2 Heard learned Advocate Mr. Anand Chawre for the applicant and Mr. A.M. Gaikwad for the sole respondent.

3 It has been vehemently submitted on behalf of the applicant that for the reasons stated in paragraph Nos.3 and 4 of the application there was delay in filing Second Appeal. Costs can be imposed and by compensating the respondent the appellant can be allowed to contest the appeal, as he has good case on merits.

4 Per contra, the learned Advocate for the respondent strongly opposed the application and an affidavit-in-reply has been filed along with the documents. It has been pointed out that the Judgment was pronounced on 28.11.2012, however, the application for the certified copies was filed by the applicant about a year later i.e. on 28.12.2013. The copies were available on 31.12.2013, however, the Second Appeal has been filed on 10.11.2014. There is absolutely no reasonable, much less sufficient ground to explain the inordinate delay. It has been mentioned in para No.4 that after the papers were collected, the applicant could not send the papers because he had lost his wife around October-November, 2013, after prolonged illness. However, the certified copy of the death extract of the wife of applicant

would show that she had expired on 10.10.2012, that is, during the pendency of the First Appeal itself. Therefore, by placing wrong facts before this Court, the sympathy has tried to be taken and, therefore, the application is not bona fide.

5 At the outset, if we consider the reasons those have been given in para Nos.3 and 4 it is to be noted that the applicant was aware about the dismissal of his appeal on 28.11.2012. He has not given any reason, as to why he had not given application for certified copies immediately. He has merely stated that he has given instructions to his Advocate, however, if the application for the certified copies itself is given after about a years period and that is not explained properly, then that is adding to the negligence, that has been shown in the matter. Further, after the certified copies were received on 31.12.2013 the Second Appeal has been filed on 10.11.2014, again almost a years period. Now, as regards this second segment of the delay is concerned, the applicant has come with the case that after the certified copies were collected, his Advocate has given him advice to approach this Court by engaging Advocate practicing before this Court. Applicant says that accordingly he had approached the Advocate practicing before this Court in the month of January, 2013 and after perusing the copies given by the applicant, the concerned Advocate noticed that those copies

were short and he instructed the applicant to bring the necessary further papers. Applicant further says that he then applied for the certified copies of the Judgment and Decree of the Trial Court. He also contends that since he is half illiterate person and a poor farmer could not get the instructions properly and with confusion he then gave some different papers. It is also stated that the papers were sent piecemeal. At the most, this part may be accepted, but it is intentionally kept vague. Which copies he had applied, when he had received, when he had tried to tender it to the Advocate, all those particulars are missing. Thereafter, he says that as he lost his wife around October-November, 2013, there was nobody to look after him. So also, he says that his son was imprisoned at that time and was released later. Those details have not been given, as to when his son was arrested and when he was released. He further says that his daughters were thereafter married and due to financial crisis, he could not collect the amount. He could not keep a track of the litigation and was under the bona fide belief that the certified copies sent by instructing Advocate to the Advocate practicing before this Court was sufficient but then in November, 2014 he discovered that the matter could not be filed for want of certified copies and papers. He then say that he again hurried up and obtained necessary remaining papers, in the last week of October, 2014. It will have to be stated that the application has been tried to be kept as vague as possible, so that the particular particulars need

not be gone into. Which documents were necessary, which were remaining, everything is vague. Further, as aforesaid, the statement regarding date of death of his wife appears to be incorrect, taking into consideration the death extract, that has been produced by the respondent on record. She had expired on 10.10.2012, that is, when the First Appeal bearing Regular Civil Appeal No.115/2011 was still pending before the First Appellate Court. Therefore, taking into consideration all these aspects, no reasonable ground, much less sufficient is shown to condone the delay. We cannot go into the merits of this case, at this stage. Unless there would have been proper account of the delay and it can also be seen that there is absolutely no reasonable explanation for the delay, in between the date of the Judgment of the First Appellate Court and the application for the certified copies filed by the present applicant, there is no merit in the application. Application stands rejected.

(Smt. Vibha Kankanwadi, J.)

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