

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CIVIL APPLICATION NO.1923 OF 2019
IN SAST/30619/2018

VASHISTHA S/O MANIK ARAN
VERSUS
GOJRABAI W/O GANGARAM MAGAR (DIED) THROUGH LRS.
GANGARAM DHONDIRAM MAGAR AND ORS

...
Mr. A. C. Darandale, Advocate for applicant.
Mr. D. A. Naik, Advocate for respondent Nos.1/1 to 1/4.
Mr. S. V. Bhosale, Advocate for respondent No.7. (Absent)
...

CORAM : SMT. VIBHA KANKANWADI, J.

DATE : 24.08.2021

ORDER :-

. Present application has been filed for getting the delay of 2106 days condoned in filing second appeal.

2. Present applicant is the original defendant No.3. Respondent No.1 (since expired) is represented by Legal Representatives i.e. respondent Nos.1/1 to 1/4, who are original plaintiffs. They had filed Regular Civil Suit No.466 of 2000 before learned Joint Civil Judge Junior Division, Kallam, Dist. Oamnsabad for partition and separate possession. The said suit came to be decreed. It was held that the original plaintiff is entitled for partition and separate possession of her

1/4th share. Present applicant intended to file first appeal, however, there was delay of two years four months and, therefore, he filed Miscellaneous Application No.15 of 2010 for getting the said delay condoned. The said application came to be dismissed in default on 28.09.2012. Now, he wants to challenge that order in this second appeal, however, there is delay of 2106 days. Hence, present application.

3. Heard learned Advocate Mr. A. C. Darandale for the applicant and learned Advocate Mr. D. A. Naik for respondent Nos.1/1 to 1/4. In order to cut short it can be said that both of them have made submissions in support of their respective contentions.

4. At the outset, it is to be noted that the present applicant had approached the first Appellate Court after delay of two years four months. Even while prosecuting that application, he appears to be negligent and, therefore, the order was passed by the learned first Appellate Court that in spite of chances given to the applicant to take steps, they have not been taken and, therefore, the application stood disposed of. Now, once again he has committed delay of 2106 days. The reason that has been tried to be given is that the applicant was out of station as he had gone to Pune to do labour work and then he had

returned to his native place on 15.08.2018. He has also stated that he is poor agriculturist and illiterate person. He accepts that there was lack of communication between him and the Advocate. One can understand that at one time there can be delay, but it cannot be a repeated act. When already there was delay of two years four months to approach the first Appellate Court, the appellant ought to have been diligent. Now, he has approached this Court after period of 2106 days. The distance between Pune and Gojwada, Tq. Washi, Dist. Osmanabad is not such far that for years together the applicant would not have been returning to his native place. One more fact that prompts this Court to reject this application is that, in this application also the applicant was not diligent. On 29.04.2019, this Court had passed a conditional order stating that applicant to take steps in respect of deceased respondent No.2 on or before 05.08.2019 and to give correct and detailed address of respondent Nos.3, 5 and 6 on or before 10.06.2019. No such steps were taken within the stipulated period and, therefore, the application stood abated against respondent No.2 and dismissed against respondent Nos.3, 5 and 6. The suit, that was filed by the original plaintiff, was for partition and separate possession. Defendant No.3 was the cousin of original plaintiff who was held to be having 1/4th share in the suit property. Rest of the share is of the original defendants. Though

present respondent Nos.2, 3, 5 and 6 can be said to be representing the estate of their family as such, yet, since no steps have been taken against those respondents, two inferences can be drawn, one is that this Court cannot pass a contrary decree and secondly, it shows that the applicant was not diligent enough in prosecuting the matter. Therefore, taking into consideration the abovesaid reasons, there is no merit in the present application. It deserves to be rejected. Accordingly, it is rejected.

[SMT. VIBHA KANKANWADI, J.]

scm