

(1)

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CIVIL APPLICATION NO.2574 OF 2015
IN
SECOND APPEAL ST.NO.34104 OF 2014
WITH
CIVIL APPLICATION NO.2575/2015

Chatrabhuji s/o Rakhmaji Kshirsagar = **APPLICANT**

VERSUS

Ali s/o Babulal Kalwat = **RESPONDENT**

Mr. DA Madke & Mr.SY Mahajan, Advocates for
Applicant;

Mr.PP Shinde, Adv. h/for Mr.NL Jadhav, Advocate
Respondent.

CORAM : SMT.VIBHA KANKANWADI, J.
DATE : 6th August , 2021.

PER COURT :-

1. Present application has been filed for getting the delay of 2182 days condoned in filing the Second Appeal.

2. The present applicant-appellant is original plaintiff, who has filed a suit bearing RCS No.278/2004 for perpetual injunction before Joint Civil Judge, Junior Division, Beed. The said suit came to be dismissed on 7.1.2006. He preferred an appeal bearing RCS No.32/2006, which was heard by learned District Judge-1, Beed and it

(2)

was dismissed on 29.9.2008. He then intends to file the Second Appeal, however, as aforesaid, there is delay of 2182 days. Hence, this application.

3. Heard learned Advocate appearing for the respective parties. In order to cut short, it can be stated that both of them have made submissions in support of their respective contentions.

4. The applicant contends that due to his illiteracy and weak financial condition, he could not get knowledge of the decision in the first appeal. He further contended that after he had filed the appeal before the first Appellate Court, he was intermittently visiting Beed and making enquiries with the Advocate. However, his advocate informed him that he should not visit him just to make enquiry in respect of progress of the appeal and then assured that he would definitely inform the progress and, therefore, he relied on the words of the learned Advocate. According to him, the learned Advocate did not inform him progress in the appeal and he was under bonafide impression that the appeal is still pending. Thereafter, he visited his Advocate only on

(3)

1.7.2009 and came to know about the disposal of the appeal. His Advocate then advised him to file the Second Appeal. He applied for the certified copies and got the same on 16.7.2009. He says that he again went to the Advocate, who was engaged by him at the lower Court for filing the Second Appeal before this Court. The applicant gave *Vakalatnama* after signing it and the documents along with the fees. Then he says that he was under bonafide impression that the Second Appeal must have been filed, he had not come to Aurangabad and could not get knowledge about progress in the matter. He suspected when no notice was issued to the respondent till 2014. Then he contacted the Advocate who was engaged by him before the lower Court. It is further contention of the applicant that in the month of September 2014, his Advocate told that his brother (who is also an Advocate) returned the certified copies and the entire file of the applicant and then by taking that the applicant visited the Advocate at Aurangabad. Again he was asked to obtain certified copies and then he has filed the present application. In the meanwhile, the Advocate, who was engaged by him

before the lower court, expired.

5. From the above said story, it can be seen that the applicant cannot be negligent all the times and believed in the words of the Advocate regarding filing of the proceedings. It was his duty also to be continuously in contact with the Advocate and ask him about progress in the matter. Even when the matter was before the first Appellate Court, it appears that he believed in the words of the Advocate. So also, according to him, even after he got the certified copies from the first Appellate Court, he did the same thing. From 2009 to 2014, he has done nothing. No enquiry was made as to his Advocate, who has been engaged. He has not tried to get phone number of that Advocate to contact him as to what is progress in the matter. It is to be noted that he had filed the suit for perpetual injunction. His suit was dismissed and the appeal was also dismissed. If he was interested in getting certain relief then he ought to have been diligent. His inaction for so many years and only by throwing burden on the Advocates, who are not before this Court; levelling allegations against them that they had not informed

(5)

anything to him; the applicant is not giving reasonable, much less sufficient, ground to seek condonation of delay.

6. A negligent litigant cannot be protected by the Courts of law. When the applicant has failed to assign sufficient and reasonable ground to seek condonation of inordinate delay, the application deserves to be rejected. Accordingly, it is rejected. Pending Civil Application, if any, stands disposed of.

(SMT. VIBHA KANKANWADI)
JUDGE

BDV