

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

**CIVIL APPLICATION NO. 555 OF 2020
IN
CIVIL REVISION APPLICATION NO. 197 OF 2019**

Nandkishor Prabhakar Wadagale

Died through L.Rs.

1] Vilasini Nandkishor Wadagale and others ... Applicants

Versus

Surjitkaur Mahendrasing Muchal and others ... Respondents

....

Mr. A. S. Kulkarni, Advocate for the applicants

Mr. S. S. Patil, Advocate for respondent Nos. 1 and 3

....

CORAM : R. G. AVACHAT, J.

DATED : 11th FEBRUARY, 2021

PER COURT :-

. This is an application for condonation of delay of 287 days in preferring civil revision application for challenging order dated 17.04.2018 passed by the Court of Civil Judge, Junior Division, Aurangabad, on Exh.43 in Regular Darkhast (execution proceeding) No.454 of 2000.

2. The applicants are the legal representatives of the original judgment debtor. The respondents are legal representatives of the original decree holder. It was a suit, being Regular Civil Suit

No. 546 of 1988 filed for specific performance for agreement for sale of agricultural land. The suit was decreed on 06.03.1990. The decree has been put to execution. The applicants appeared in the execution proceedings and raised objection under Section 47 of the Code of Civil Procedure by preferring application Exh.43. The executing Court rejected the application vide order dated 17.04.2018. The said order is sought to be challenged in this revision application.

3. Heard.

There is delay of 287 days in preferring the revision application. It has been averred in para 3 of the application that learned Advocate representing the applicants in the execution proceedings did not inform them about the order below Exh.43 till the end of December – 2018. It is only on inquiry made with the Advocate, they came to know about the impugned order in December-2018. The applicants therefore appointed another Advocate and applied for certified copies of necessary documents on 26.03.2019. The certified copies were received on 03.04.2019. There is no intentional delay.

4. Learned Advocate for the applicants made submissions consistent with the pleadings in the application.

5. On the other hand, learned Advocate for the respondents submitted that the decree dates back to 1990. With a view to delay the execution of the decree and deprive the respondents of the fruits of the decree, the application under Section 47 of the Code of Civil Procedure was moved. The averments in the application are denied in toto. The delay has not been satisfactorily explained. He, therefore, urged for rejection of the application.

6. It is a decree for specific performance of agreement for sale. The said decree is said to have been passed *exparte*. The applicants appeared in the proceedings initiated for execution of the decree and raised an objection under Section 47 of the Code of Civil Procedure. The executing Court rejected the application. In para 3 of the application, it has been stated that the concerned Advocate did not inform the applicants of the date of decision on application Exh.43. As such, delay is said to have been occurred due to negligence of the Advocate representing the applicants before the executing Court, time spent in obtaining certified copies etc.

7. True, there is some delay in preferring the civil revision application.

8. The Apex Court in the case of *Collector, Land Acquisition Anantnag and another vs. Mst. Katiji and others* reported in *AIR 1987 SC 1353*, has observed thus:

“3. The legislature has conferred the power to condone delay by enacting S.5 of the Indian Limitation Act of 1963 in order to enable the Courts to do substantial justice to parties by disposing of matters on 'merits'. The expression "sufficient cause" employed by the legislature is adequately elastic to enable the Courts to apply the law in a meaningful manner which subserves the ends of justice that being the life-purpose for the existence of the institution of Courts. It is common knowledge that this Court has been making a justifiably liberal approach in matters instituted in this Court. But the message does not appear to have percolated down to all the other Courts in the hierarchy. And such a liberal approach is adopted on principle as it is realized that:-

1. Ordinarily a litigant does not stand to benefit by lodging an appeal late.

2. Refusing to condone delay can result in a meritorious matter being thrown out at the very threshold and cause of justice being defeated. As against this when delay is condoned the highest that can happen is that a cause would be decided on merits after hearing the parties.

3. "Every day's delay must be explained" does not mean that a pedantic approach should be made. Why not every hour's delay, every second's delay? The doctrine must be applied in a rational common sense pragmatic manner.

4. When substantial justice and technical considerations are pitted against each other, cause

of substantial justice deserves to be preferred for the other side cannot claim to have vested right in injustice being done because of a non-deliberate delay.

5. There is no presumption that delay is occasioned deliberately, or on account of culpable negligence, or on account of mala fides. A litigant does not stand to benefit by resorting to delay. In fact he runs a serious risk.

6. It must be grasped that judiciary is respected not on account of its power to legalize injustice on technical grounds but because it is capable of removing injustice and is expected to do so.”

9. With a view to give the applicants an opportunity of hearing and in the interest of justice, the civil application is allowed, subject to cost of Rs.10,000/- to be paid to the respondents in/before the executing Court.

[R. G. AVACHAT, J.]

SMS