

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CIVIL APPLICATION NO.5950 OF 2020
IN SAST/38354/2016

SHAIKH SAJJID SHAIKH GULAB
VERSUS
1/ SK. IIKROMODDIN SK. GULAB AND OTHERS

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Mr. D. R. Irale-Patil h/f Ms. S. L. Awchar, Advocate for the applicant.
Mr. B. R. Kedar, Advocate for respondent No.1

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CORAM : SMT. VIBHA KANKANWADI, J.

Reserved on : 04.10.2021

Pronounced on : 29.10.2021

ORDER :-

1. Learned Advocate Mr. Bedre submits that he has given no instructions pursis and he was earlier representing the applicant and now learned Advocate Ms. Shilpa Awchar is appearing.

2. Under Such circumstance, learned Advocate Mr. Bedre is discharged. His appearance may not be shown for the applicant.

3. Present application has been filed for getting the delay of 667 days condoned in filing second appeal. Present applicant is the original plaintiff, who want to file second appeal challenging the judgment and decree passed in Regular Civil Appeal No.18 of 2010 by learned Adhoc

District Judge-3, Jalna on 17.11.2014, thereby the other two appeals along with the appeal under challenge, all were dismissed by a common judgment and thereby the decree passed in Regular Civil Suit No.125 of 2007 by learned Joint Civil Judge Senior Division, Jalna on 24.09.2010 was confirmed.

4. The present applicant - original plaintiff had filed the said suit for declaration and perpetual injunction. It was contended that there was no cart road towards the southern side of Gut Nos.80 and 85 belonging to the plaintiff and the partition deed dated 13.06.1994 is a forged document. Further, declaration was prayed that the agreement dated 25.06.2004 is also a forged document and not binding on him. He prayed that the order of Tahsildar dated 30.03.2007 be set aside. The learned Trial Judge held that the plaintiff has proved that the order passed by Tahsildar on 30.03.2007 is illegal and perverse, however, the other reliefs than the declaration of setting aside the order by the Tahsildar were refused. Present appellant – original plaintiff filed Regular Civil Appeal No.18 of 2010 and Regular Civil Appeal Nos.188 of 2010 was also filed by him. Further, the present respondent filed Regular Civil Appeal No.208 of 2010. As aforesaid, by a common judgment, all the three appeals have been dismissed. In fact, we are more concerned with the decision in Regular Civil Appeal No.188 of

2010, which was filed by the present appellant challenging the judgment and decree in Regular Civil Suit No.125 of 2007.

5. Heard learned Advocate Mr. D. R. Irale-Patil holding for learned Advocate Ms. Shilpa Awchar for applicant and learned Advocate Mr. B. R. Kedar for respondent No.1.

6. It has been vehemently submitted on behalf of the applicant that after dismissal of the first appeal, the applicant had obtained the certified copies, however, in the month of January 2015, the applicant was suffering from jaundice and was bedridden up to June 2015. Thereafter, he had misplaced the certified copies and other papers. He was also suffering from illness due to old age and was unable to attend the proceedings. In the month of August, 2016, he approached the Advocate for filing the appeal and collected necessary papers. He is poor agriculturist having no knowledge about the legal procedure and practices. Present respondent No.1 has filed Second Appeal No.80 of 2008 in respect of the suit land and it is pending. Under such circumstance, the delay which is unintentional deserves to be condoned.

7. The application has been objected by respondent No.1 by filing affidavit-in-reply. It has been contended that the reasons given by the applicant for getting the delay condoned are not genuine. In fact,

present applicant – original plaintiff has filed another suit i.e. Regular Civil Suit No.82 of 2016 against respondent No.1 and his brother before learned Civil Judge Junior Division, Jalna for re-opening of partition. He is regularly prosecuting that suit. Under such circumstance, the excuse under the guise of alleged illness cannot be given to him. He has made false statement about his health. The delay is not properly explained, which is more than two years.

8. Learned Advocate for respondent No.1 has relied on the decision in *Kamalbai w/o Narasaiyya Shrimal and another Vs. Ganpat s/o Vithalrao Gavare, [2007 (1) Mh.L.J. 807]*, wherein it has been held :-

“ There cannot be any duality of opinion that normally a litigant would not intentionally commit delay in filing of proceedings like an appeal. The delay cannot be condoned only because it is unintentional. It will be rather too wide interpretation if the condonation of delay is to be allowed only because there is no intention of a party to cause delay. The reason is not far to seek. For, the expression “intention” cannot state of mind of a person. The state of mind cannot be fathomed without there being attending circumstances. In the present case, there is only an allegation that the petitioners had no intention to cause delay. There are no sufficient attending circumstances placed on record to bolster up such allegation. Mere poverty cannot be a ground for condonation of the delay. Petition dismissed.

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. No such “sufficient cause” stated in the application and as such no interference in the impugned order is called for.”

9. It is also to be noted that during the course of the arguments, it has come on record that Second Appeal No.519 of 2016 has been filed by respondent No.1, however, there was no delay, though it appears that the appeal was numbered belatedly. Merely because the other party has filed appeal challenging the same judgment and decree that doesn't *ipso facto* gives right to the present applicant to get the delay condoned. Independently, the present applicant will have to show that there were reasonable grounds for not approaching the Court within limitation.

10. Though it has been stated in the application that the applicant would like to rely on the medical certificate, yet it can be seen that no such certificate issued by any competent Doctor has ever been produced by the applicant. Therefore, there is no support to his submission that in the month of January 2015 he was suffering from jaundice and was bedridden up to June, 2015. The present applicant has already taken the certified copies immediately after the pronouncement of judgment by the first Appellate Court. The applicant is then coming with the case

that he had misplaced the certified copies. Again, he says that he was ill. He has not stated the nature of his illness and where he had taken the treatment. Everything has been stated in a vague. The delay of 667 days is huge and inordinate. Even if leniency is given for a drafting, yet when it is not supported by any evidence and when he already had the certified copies in his hand, he was only require to give necessary instructions to the Advocate to whom he wanted to engage. Another fact which we cannot forget is that along with his sons, the plaintiff has filed Regular Civil Suit No.82 of 2016 before learned Civil Judge Senior Division, Jalna. That means, at one place, he was prosecuting the matter and at another place, he says that he is suffering from jaundice. Under such circumstance, the application doesn't appear to be *bona fide*. The ratio laid down in ***Kamalbhai Narasaiyya Shrimai and another (Supra)*** is applicable here. When no reasonable much less sufficient ground has been shown to condone the huge and inordinate delay, the application deserves to be dismissed. Accordingly, it is dismissed.

[SMT. VIBHA KANKANWADI, J.]

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