

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

908 CIVIL APPLICATION NO.7226 OF 2020
IN SAST/37838/2018

SHAIKH KHAYUUM OSMANSAHEB AND ANOTHER
VERSUS
SHAIKH ABDUL GANI OSMANSAHEB (DIED) LRS FAIMUDABEE AND
OTHERS

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Advocate for Applicants : Mr. Bhumkar R. P.
Advocate for Respondent Nos.1/1 to 1/5 : Mr. C. C. Deshpande
Advocate for Respondent No.3 : Mr. Satish Godsay

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CORAM : SMT. VIBHA KANKANWADI, J.

DATE : 26.11.2021

ORDER :-

. Present application has been filed for getting the delay of 166 days condoned in filing second appeal.

2. Heard learned Advocate Mr. R. P. Bhumkar for the applicants, learned Advocate Mr. C. C. Deshpande for respondent Nos.1/1 to 1/5 and learned Advocate Mr. Satish Godsay for respondent No.3.

3. The learned Advocate appearing for the applicants submits that applicant No.1 is an old person, who was looking after the Court matters and the applicants had suffered losses in the business. Therefore, they were constrained to file the appeal beyond the period of limitation. It is

submitted that the first Appellate Court pronounced the judgment and decree on 31.03.2018 and allowed the appeal filed by respondent Nos.1/1 to 1/5. When the applicants came to know about the decision, then they applied for the certified copies on 01.08.2018 and received it on the same day. Thereafter, other certified copies were applied on 04.08.2018 and they were received by them on 17.08.2018. The delay is unintentional and when vital rights are involved, the delay be condoned.

4. The learned Advocate Mr. Godsay appearing for respondent No.3 has taken formal objection. Learned Advocate Mr. Deshpande appearing for respondent Nos.1/1 to 1/5 raises strong objection on the ground that whatever reason has been given is not reasonable much less sufficient to condone the inordinate delay of 166 days.

5. At the outset, it is to be noted that the present appellants are the original defendant Nos.1 and 2. Original plaintiff i.e. predecessor of present respondent Nos.1/1 to 1/5 has filed Regular Civil Suit No.727 of 2005 before the learned Joint Civil Judge Senior Division, Latur for perpetual injunction. That suit was partly decreed. Defendant Nos.1 and 2 were restrained perpetually from causing obstruction and interference to the peaceful possession of the plaintiff over eastern 45 x

85 ft. portion of plot No.22 at Trenching Ground, Latur. The said decree was challenged by the present appellants by filing Regular Civil Appeal No.205 of 2010 and it appears that even the legal representatives of original plaintiff also filed Regular Civil Appeal No.202 of 2010 to challenge the part of the decree. The learned Principal District Judge, Latur by judgment and decree dated 31.03.2018 dismissed Regular Civil Appeal No.205 of 2010 filed by present appellants and allowed the appeal filed by the present respondent Nos.1/1 to 1/5. By this second appeal, the present appellants want to challenge the said judgment and decree. As aforesaid, there is delay of 166 days. In order to explain the delay, the applicants are taking twofold grounds. One is the old age of applicant No.1 and another is their financial crisis. It is to be noted that when the application was filed, the applicant No.1 is stated to be 81 years old person. Applicant No.2 is his son. The applicants are contending that only applicant No.1 was looking after the Court matter. This becomes somewhat unbelievable in view of the fact that the young son is also a party to the litigation. Secondly, the financial crisis cannot be taken as a good ground in view of the fact that still the occupation of the applicants is business and in the application itself, it is stated that the applicants are running sawmill. The suit was for perpetual injunction only and we can see what would be the Court fee that is

required.

6. However, taking into consideration the fact that the property rights or connecting to the property rights, the dispute has been raised, lenient view is taken and, therefore, the application deserves to be allowed, however, the inconvenience that would be caused to respondent Nos.1/1 to 1/5 deserves to be compensated in terms of money. Hence, the following order :-

ORDER

- I) Application stands allowed.
- II) The delay caused in filing second appeal stands condoned, subject to deposit of cost of Rs.10,000/- in this Court within a period of three weeks from today.
- III) If the cost amount is deposited, registry to verify and register the second appeal.
- IV) The amount so deposited be given to respondent Nos.1/1 to 1/5 equally.

[SMT. VIBHA KANKANWADI, J.]

scm