

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**CIVIL APPELLATE JURISDICTION****I.A. NO. 748 OF 2021****IN****SECOND APPEAL (STAMP) NO. 4725 OF 2021**

Manik Apparao Garad & Anr.

.....Applicants.

Vs.

Sou. Kasturbai Vasant Garad & Ors.

.....Respondents.

Mr. R.M. Haridas i/by Mr. Prasad P. Kulkarni for the Applicants.

Mr. Anand S. Kulkarni for the Respondents.

CORAM : A. S. GADKARI, J.**DATE : 17th AUGUST, 2021.****PC.:-**

The present Application is for condonation of delay of 5 years and 48 days in preferring the Second Appeal against the impugned Judgment and Order dated 19th November, 2013 passed below Exhibit-31 in Civil Miscellaneous Application No.126 of 2011 by the learned District Judge-1, Solapur, thereby rejecting the said Application for condonation of delay of one year and fifteen days with costs, in filing Appeal against the Judgment and Decree dated 8th April, 2010 in R.C.S.No.354 of 2007.

2 Heard Mr. Haridas, learned counsel for the Applicants and Mr. Kulkarni, learned Advocate for the Respondents. Perused record.

3 Mr. Haridas, learned counsel for the Applicants submitted that, the delay caused in filing the present Second Appeal is not intentional or

deliberate and has caused due to communication gap between the Applicants and their Advocate, who had appeared on behalf of them in the District Court, at Solapur. That, the Applicants came to know about the fact of dismissal of their Application for condonation of delay below Exhibit-31 on 25th June, 2019, when the name of Applicant No.1-Manik Apparao Garad came to be deleted from Mutation Entry and the name of Respondent No.1 Kasturbai Vasant Garad was mutated in the record of rights. That, thereafter, the Applicants rushed to their Advocate to file Writ Petition No.10086 of 2019. That, on 22nd February, 2021, the Applicants withdrew the said Writ Petition, as it was not the proper remedy to challenge the impugned Order. Thereafter, the present Second Appeal is filed.

Mr. Haridas, learned counsel relied on a decision of the Hon'ble Supreme Court in the case of *Radha Krishna Rai Vs. Allahabad Bank & Ors.*, reported in (2000) 9 SCC, 733 to contend that, due to miscommunication between the Applicants and their Advocate, the delay has been occurred and therefore, the said delay in filing the present Application may be condoned and the Second Appeal may be heard on its own merits.

He therefore prayed that, the delay in filing the present Second Appeal may be condoned by allowing the present Application.

4 Mr. Kulkarni, learned counsel appearing for the Respondents vehemently opposed the Application and submitted that, the Respondents have filed an Affidavit in reply dated 17th August, 2021, to oppose the

present Application. He submitted that, the Advocate who appeared for the Applicants before the District Court at Solapur, after rejection of the Application for condonation of delay by the District Court, had filed a separate suit on behalf of them. He submitted that, thus it clearly shows that, the Applicants were in contact with their Advocate who appeared for them in the District Court at Solapur. He submitted that, the plea taken by the Applicants in para No. 9 of the Application is palpably false. He therefore, prayed that the present Application may be dismissed.

5 At the outset, it is to be noted here that, the litigants/clients cannot be heard to raise a spacious plea that, there was a communication gap between him and his Advocate. Many a times, the litigants carry the wrong impression that, once an advocate is briefed in a case, it is the duty of the concerned Advocate to take care of the case at all stages, till the litigation comes to an end. It is the settled position of law that, it is the equal responsibility of the clients/litigants to follow up their own matter with their Advocate and not to blame their Advocate for the lapses committed by the litigants.

6 The first Appellate Court while rejecting the Application for condonation of delay of one year and fifteen days, in paragraph No.9 of the impugned Order has given specific break-up of time as to when the Applicants received certified copies and filed the Application before the Appellate Court for condonation of delay.

7 A bare perusal of the present Application for condonation of delay of 5 years and 48 days, would clearly indicate that, no satisfactory least to say, any plausible explanation for condonation of such a colossal and inordinate delay has been offered by the Applicants. The opposition of Respondents in condonation of delay by their Affidavit dated 17th August, 2021 appears to be more genuine and bonafide. The Applicants have taken only a spacious plea of communication gap between them and their Advocate for seeking condonation of such an inordinate delay and none else.

As far as the decision of the Hon'ble Supreme Court *Radha Krishna Rai (Supra)* relied upon by the learned counsel for the Applicants is concerned, the same totally defers on the facts involved in the said case and therefore is not applicable to the case in hand.

8 As noted above, the Applicants have failed to offer any satisfactory and plausible explanation for condoning such a colossal and inordinate delay occurred in filing the present Second Appeal.

I find no merits in the Application, Application is accordingly dismissed.

9 In view of dismissal of Application for condonation of delay in filing the Second Appeal, the Second Appeal does not survive and is accordingly disposed off.

(A.S. GADKARI, J.)