

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

SECOND APPEAL NO.396 OF 2015

APPLICANTS:-

(Plaintiffs)

(On R.A.)

1. Smt. Meena W/o Jagdish Ramteke
Aged about Major, Occu: Nil,
R/o Rani Bhosle Nagar, Sakkardara,
Nagpur.
2. Smt. Shalu Wd/o Rajesh Kurewar
Aged about- Major, Occ: Nil,
R/o Shaniwari Ward, Pauni,
Tah. Pauni, Distt. Bhandara.

... VERSUS ...

RESPONDENTS:-

(Defendants)

(On R.A.)

1. Shri Sriram S/o Shankar Gajbhiye,
Aged about- Major, Occ: Agriculturist.
2. Ramkrushna S/o Shankar Gajbhiye
Aged about- Major, Occ: Agriculturist.
3. Smt. Kiran Wd/o prabhakar Gajbhiye
Aged about- Major, Occ: Agriculturist.
- 3(a) Snehal S/o Prabhakar Gajbhiye
Aged 14 years, Occ: Education.
- 3(b) Ku. Mega S/o Prabhakar Gajbhiye,
Aged 12 years, Occ: Education.

Respondent No.1 to 3(b) all R/o Mohali,
Mohadi, Tah. Nagbhid, Distt. Chandrapur.
Respondent No.3(a) & 3(b) are Minor,
through the Mother resp. no.3 being
Guardian of Deft. No.3(a) and 3(b).

4. Manohar S/o Shankar Gajbhiye,
Aged about- Major, Occ: Service,
R/o. Talodhi (Balapur), Tah. Nagbhid,
Distt. Chandrapur.

Mrs. Bindiya J. Murkute, Advocate for the Appellants.
Shri C.N. Funde, Advocate for the Respondents.

CORAM : S.M. MODAK, J.
DATE : 22nd SEPTEMBER, 2021

ORAL JUDGMENT:-

Heard learned Advocate for the appellants/original plaintiffs
and learned Advocate for the respondents/original defendants.

02] This Court while admitting the appeal on 13th January, 2017
has framed following substantial question of law—

*“Whether the lower Appellate Court has committed an error
in rejecting the application for condonation of 106 days
caused in filing an appeal dismissing the suit for partition?”*

03] With the assistance of both the learned Advocates, I have
perused the order passed by learned District Judge-4, Chandrapur on
26th November, 2014. By the said order, the first Appellate Court
refused to condone the delay of 106 days caused in preferring the first
appeal. The present appellants who are the plaintiffs in Reg. Civil Suit
No.20/2005 have filed the said delay condonation application. Their
suit for partition, possession and declaration came to be dismissed on
14th September, 2010. The first Appellate Court observed that there is
no sufficient reason for condonation of delay.

04] In order to ascertain whether the first Appellate Court was

right in arriving at that conclusion, with the assistance of both the learned Advocates, the pleadings are perused. It consist of the application and reply filed on behalf of respondent No.4. The appellants had given following explanation—

a.	On 14 th September 2010— the judgment was pronounced by the trial Court.
b.	On 15 th September, 2010— plaintiffs got knowledge about dismissal.
c.	Ten days thereafter— plaintiffs met local Advocate at Nagbhid and paid the expenses for certified copy.
d.	On 8 th November, 2010— plaintiffs contacted their Advocate and got certified copy from their Advocate.
e.	Plaintiffs contacted their Advocate at Nagpur and plaintiffs were asked to arrange for at least 5,000/- towards the fees.
f.	Till 30 th January, 2011— plaintiffs could not arrange for the fee.
g.	On 30 th January, 2011— plaintiffs were told by their Advocate that period of one month is already over.
h.	On 1 st February, 2011— delay condonation application was filed.

05] Only respondent No.4 in the reply has denied all the averments and according to him, the plaintiffs were negligent and they

were sleeping over their rights. Respondent No.4 has alleged *mala fide* on the part of the plaintiffs.

06] The first Appellate Court in the impugned judgment has scrutinized the averments from the pleadings and concluded that no sufficient cause has been shown. While doing scrutiny of that, the first Appellate Court has emphasized on diligent attitude of the parties who are seeking for condonation of delay.

CONCLUSION

07] If the averments in the application and reply are perused, we may find that the plaintiffs have not sat idle. They have followed up with the Advocate at Nagbhid and at Nagpur. Ultimately, the litigants have to depend upon the legal advice for completion of the procedure required to be followed before proceedings is filed. It is also true that the litigants who have to approach to the Court have to arrange for the money for the legal fees. These steps are the normal steps which were taken in any usual Court proceedings.

08] Now, what is meant by sufficient cause depends upon facts of each case. Sufficient cause can be interpreted as a cause which is found to be sufficient, reasonable for not approaching the Court in time. No one can dispute that certified copy is required and services of the legal experts though not mandatory, but are required. If this is the scenario, how one can say that these are not the *bona fide* reasons. The litigants

who have failed in getting a relief from the Court, they will not sit idle and they will be eager to approach the higher Court for getting the reliefs in their favour. I do not find any *mala fide* on the part of the plaintiffs in approaching the first Appellate Court belatedly. So, I find sufficient reason for condonation of delay. The first Appellate Court has taken rigid approach. It needs to be corrected.

09] The respondents are required to be compensated to a certain extent by imposing costs. The appellants to pay costs of Rs.5,000/- to the respondents. Accordingly, I answer the question in the affirmative and proceed to pass the following order:-

ORDER

- 1) The appeal is **allowed**.
- 2) The order dated 26th November, 2014 passed by Court of District Judge-4 in M.C.A. No.19/2011 is set aside.
- 3) The M.C.A. No.19/2011 preferred by the appellants for condonation of delay of 106 days is allowed.
- 4) The first appeal of the appellants be admitted.
- 5) The appellants to pay the costs of Rs.5,000/- to the respondents.
- 6) The first Appellate Court to verify whether the costs has been paid by the appellants.

- 7) Both the parties are directed to appear before the District Court, Chandrapur on **11th October, 2021**.
- 8) Learned Advocate for the respondents to instruct his clients to appear before that Court on that date without waiting for the notice.
- 9) The first Appellate Court to pass appropriate order on the appeal on the first date and then to decide the appeal as per the merits, as early as possible.
- 10) The appeal is disposed of in above terms.
- 11) Pending application, if any, stands disposed of.

(S.M. MODAK, J.)

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