

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, NAGPUR.**

SECOND APPEAL NO. 167 OF 2019

1. Ramgopal S/o Fakirchand Baheti,
Aged 87 years, Occ. Nil,
R/o. Raipur, Tahsil & Dist. Buldhana.
(presently at Survey No.171/5, Plot No.13,
Sadguru Nagar, Masoba Nagar,
Aurangabad-431001.
2. Vimal W/o Ramgopal Baheti (Dead),
Through LR's
- 2(a). Satish S/o Ramgopal Baheti,
Aged 61 years, Occ. Cultivator,
R/o Raipur, Tahsil & Dist. Buldhana,
- 2(b). Arun S/o Ramgopal Baheti,
Aged 58 years, Occ. Service,
R/o Partur, Adarsh Colony, Tahsil-Partur
& Dist. Jalna. (presently at Survey No.171/5
Plot No.13, Sadguru Nagar, Masoba Nagar,
Aurangabad-431001.
- 2(c). Sau. Sandhya W/o Omprakash Rathi,
Aged 53 years, Occ. Household,
R/o Shahpur, Tah. Khamgaon
& Dist. Buldhana.
3. Dilip S/o Ramgopal Baheti (Dead),
Through LR's
- 3(a). Smt. Nirmala Wd/o Dilip Baheti,
Aged 45 years, Occ. Household,

- 3(b). Bhushan S/o Dilip Baheti,
Aged 24 years, Occ. Education,
- 3(c). Naresh S/o Dilip Baheti,
Aged 21 years, Occ. Education,
Sr. No.3a to 3c R/o Raipur, Tah &
Dist. Buldhana.
- 3(d). Asha W/o Manojkumar Bhutda,
Aged 27 years, Occ. Houshold,
R/o Sultanpur, Tah. Lonar &
Dist. Buldhana.

.... **APPELLANTS.**

// VERSUS //

1. Maharashtra State Co-operative Marketing,
Federation Ltd. Mumbai, through its
District Marketing Officer, Buldhana,
Tah. & Dist. Buldhana.
2. Smt. Sangita Wd/o Pramod Baheti,
Aged 40 years, Occ. Household.
3. Ku. Sonali D/o Pramod Baheti,
Aged 22 years, Occ. Education.
4. Sudarshan S/o Pramod Baheti,
Aged 20 years, Occ. Education,
Sr. Nos.2 to 4 last known address
R/o Raipur, Tah. & Dist. Buldhana.

.... **RESPONDENTS.**

Shri Abhay Sambre, Advocate for the Appellants.
Shri P.D. Meghe, Advocare for the Respondents.

CORAM : ANIL S. KILOR, J.
DATED : NOVEMBER 17, 2021

ORAL JUDGMENT :

1. Heard.

2. The challenge raised in this appeal is to the judgment and decree dated 04/12/2018 passed by District Judge-1, Buldhana in Civil Misc. Application No.11 of 2008, rejecting the application for condonation of delay in filing the Civil Appeal under Section 96 of the Code of Civil Procedure.

3. The brief facts, which are relevant in deciding the controversy involved in the present appeal, are as follows: (Parties are referred as per their status before the trial Court)

4. The Special Civil Suit No.48 of 2007 was filed by the plaintiff-Maharashtra State Co-operative Marketing Federation Ltd., Mumbai against the defendants for recovery of Rs.37,17,822/-. The

suit was decreed on 23/04/2013 and thereafter the execution proceeding was filed vide Special Darkhast No.32 of 2017 and the property owned by the defendants bearing Block No.594, admeasuring 1 H. 81R was attached and the notice of auction was affixed on the notice board.

5. It is the case of the defendants that they got the knowledge regarding attachment of the property and the decree in the month of December, 2017 and thereafter within reasonable time i.e. on 24/01/2018, appeal challenging the decree dated 23/04/2013 was filed. However, because there was a delay of 1744 days, in filing the said appeal, an application for condonation of delay was preferred, which came to be dismissed vide impugned judgment and order dated 04/12/2018.

6. I have heard Shri Abhay Sambre, learned counsel appearing for the appellants and Shri P.D. Meghe, learned counsel appearing for the respondents.

7. This Court on 27/10/2021 has framed following substantial question of law:

“Whether the learned lower Appellate Court while rejecting the application for condonation of delay has properly considered the explanation put-forth by the appellants for condonation of delay ?”

8. Shri Sambre, learned counsel for the appellants submit that in spite of the fact that in the application for condonation of delay, it was pointed out that the defendants got knowledge about attachment of the property and the decree passed by the lower Appellate Court in the month of December, 2017. The said explanation has not been considered by the learned lower Appellate Court in the right perspective and recorded incorrect facts without considering the date of filing of the appeal.

9. Shri Meghe, learned counsel for the respondent No.1 supports the impugned judgment and decree dated 04/12/2018 and submits that the learned lower Appellate Court has rightly rejected the application for condonation of delay. He thus prays for dismissal of appeal.

10. To consider rival contentions of the parties, I have gone through the record and perused the judgments and decree passed by the Courts below.

11. After going through the impugned judgment and decree dated 04/12/2018 apparently, it is clear that the learned lower Appellate Court has not considered the justification and sufficient cause shown by the appellants in the application for condonation of delay. The appellants have specifically stated that they got knowledge in the first week of January, 2018 on seeing copy of notice vide order in Darkhast No.32/2017, affixed on the notice board, showing thereby that the property in question has been attached.

12. In reply to the said case of the appellants, the respondents have denied that the appellants received knowledge in the first week of January, 2018. It is stated that the order of attachment was passed on 09/11/2017 and from that date the appellants had knowledge about the order of attachment as well as the judgment and decree

passed by the trial Court. Whereas, it is pointed out by the learned counsel for the appellants that the said order of attachment was *ex-parte* and the said order was executed on 31/12/2017 and immediately thereafter within 24 days the appeal came to be filed. It is clear from the judgment and order passed by the lower Appellate Court that all these facts have not been taken into consideration which are in fact sufficient to explain the delay caused in filing the first appeal.

13. In that view of the matter, I am of the considered view that the learned lower Appellate Court committed an error in not considering the justification and explanation given by the appellants for delay caused in filing the first appeal. As the appellants have shown sufficient reasons for condonation of delay, I am of the view that the judgment and order passed by the learned lower Appellate Court dated 04/12/2018 needs to be set aside and the delay caused in filing the first appeal is required to be condoned. Accordingly, I have answered the substantial question of law in above terms. Hence, I pass the following order:

- (i) The judgment and order dated 04/12/2018 passed by District Judge-1, Buldhana in Misc.Civil Application No.11/2018 is hereby quashed and set aside and thereby the delay caused in filing the appeal is condoned.
- (ii) The matter is remitted back to the learned lower Appellate Court for decision on merits.
- (iii) The Appellate Court is further directed to decide the appeal within six months from the date of receipt of certified copy of this order.

The Second appeal is **disposed of**. No order as to costs.

(ANIL S. KILOR, J)

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