

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

CIVIL APPLICATION NO. 5399 OF 2022
IN SECOND APPEAL (ST) NO. 8881 OF 2020

VISHAL JEEVAN TANPURE
VERSUS
SHIVMURTI KASHINATH PAKHALE AND OTHERS

Advocate for Applicant : Mr. N.C. Garud
Advocate for Respondent Nos.1 to 3, 7B & 7C : Mr. Y.V. Kakade

CORAM : RAJESH S. PATIL, J.
DATE : 5th December, 2022

PER COURT :

1. This Civil Application is filed for condoning the delay of 563 days in filing Second Appeal.
2. Learned Counsel for applicant argued that, he has good case on merits and in fact the suit was dismissed by the Trial Court, however, the Appellant Court has reversed the decree passed by the Trial Court. He has also prayed that, in the interest of justice the delay be condone by imposing some reasonable costs on the applicant. Learned Counsel for the applicant also stated in paragraph No.3 of this Civil Application that, there were compromise talks between the parties hence, his client had not taken any steps as regards the impugned judgment and order. He has also pointed out that, the reply has been filed for condonation of delay application, and in the reply respondents have not

specifically denied the contents of paragraph No.3 of the Civil Application. Only a general denial to the entire Civil Application has been stated in paragraph No.1 of the affidavit-in-reply.

3. Learned Counsel for the applicant also stated that, the original suit for eviction against applicant was filed by four plaintiffs. The said suit for possession and arrears of rent was dismissed by the Trial Court. It is also further stated that, original plaintiff No.3 – Chandrashekhar Kashinath Pakhale died during the pendency of Trial Court's proceedings. However, the judgment and decree of dismissal of the suit passed by the Trial Court was challenged only by one of the plaintiff i.e. plaintiff No.1 Shivmurti Kashinath Pakhale. However, there is no reason given as to why the legal representatives of Chandrashekhar Pakhale were not made party to the Appellate Court proceedings. He further states that, the decree passed by the learned Trial Court has become final as far as legal representatives of original plaintiff No.3 is concerned. Therefore, he states that delay be condone and the Second Appeal be taken up for admission immediately and be heard on merits. The learned Counsel for applicant has relied upon the judgment of ***Collector, Land Acquisition, Anantnag and another Vs. Mst. Katji and Others*** reported in ***1987 SC 1353***,

has relied upon herein :

“Every day’s delay must be explained” does not mean that a pedantic approach should be made. Why not every house’s delay. Every second’s delay ? The doctrine must be applied in a rational common sense pragmatic manner.”

Hence, learned Counsel for applicant prayed for condoning the delay in filing the Second Appeal.

4. Learned Counsel for respondent Nos.1 to 3, 7B and 7C has oppose this application. Today nobody appeared for respondent No.4 to 6 even though they are served. Learned Counsel for respondent Nos.1 to 3, 7B and 7C states that, he has filed reply to the delay condonation application and has oppose it. He has stated that, applicant has purposefully not filed the Second Appeal in time even when he was well aware of the lower Court proceedings including the Execution Application filed before the Trial Court. He has further stated that, applicant was aware of the execution proceedings but to protract the proceedings has not appeared before the Court and ultimately respondents have given paper publication as regards the applicant on 1st October, 2021. He states that, the delay condonation application is being devoid of merits and same be dismissed with costs. Learned Counsel for respondents has also relied upon the judgment of ***Kamalbai Narasaiyya Shrimal and Another Vs. Ganpat Vithalrao***

Gavare reported in **2007 (1) Mh.L.J. 807**, paragraph Nos.13 and 15 are reproduced :

13. The factual position is manifestly clear on bare perusal of the application for condonation filed by the petitioners before the learned District Judge. The only relevant statement in the application is thus :

"The delay caused in preferring the appeal is of six months. The caused delay is not intentional one. The appellants are poor and helpless persons. If the delay is not condoned appellant may cause irreparable loss which cannot be compensated in terms of money. The suit was for recovery of possession and present appellants are tenants. If the delay is not condoned then appellants will become shelterless."

15. The expression "sufficient cause" cannot be erased from section of the Limitation Act by adopting excessive liberal approach which would defeat the very purpose of section 5 of the Limitation Act. There must be some cause which can be termed as a sufficient one for the purpose of delay condonation. I do not find any such "sufficient cause" stated in the application and as such no interference in the impugned order is called for."

5. I have considered the delay condonation application and the reply filed by learned Counsel for respondents so also I have extensively heard learned Counsel for both the parties. Learned Counsel for the applicant herein has specifically stated that, in paragraph No.3 of the Civil Application it is stated that, there were compromise talks between the parties. In reply learned Counsel for the respondents was not able to show in affidavit-in-reply a specific denial to the compromise talks.

6. The suit property is an open plot of land ad-measuring 20 ft. x

19 ft., with tin shade standing thereon meant as dwelling house and shop. The respondents herein filed suit for possession and arrears of land, which was dismissed. The Appeal was filed by only by plaintiff No.1, so also the legal representatives of plaintiff No.3, were not brought on record. The Appellate Court, however, has reversed the decree of Trial Court. Therefore, the applicant herein has filed the Second Appeal but since there is delay in filing the Second Appeal, he preferred the civil application for Condonation of Delay.

7. While this judgment was being dictated learned Counsel for respondents has shown me paragraph No.11 of his affidavit-in-reply wherein the statement regarding the compromise has been stated and the said sentence is reproduced hereinbelow :

“Also the reason mentioned in the application about the compromise the applicant has not shown any proof in respect of compromise talk as well the compromise between the applicant and the answering respondent.”

A bare reading of this lines means that, respondents have stated that, there is no proof in respect of the compromise talks. However, the respondents have not denied that, they were compromise talks. Hence, I conclude that, there were compromise talks between the parties, but the same did not materlise.

8. The Hon’ble Supreme Court in the case of ***S. Ganesharaju***

(Dead) through LRs v Narasamma (Dead) through LRs reported in (2013) 11 SCC 341, more specifically, paragraph Nos. 12 and 13, of the said judgment. The said paragraphs are reproduced herein below :

12. The expression “sufficient cause” as appearing in Section 5 of the Limitation Act, 1963, has to be given a liberal construction so as to advance substantial justice. Unless the respondents are able to show mala fides in not approaching the court within the period of limitation, generally as a normal rule, delay should be condoned. The trend of the courts while dealing with the matter with regard to condonation of delay has tilted more towards condoning delay and directing the parties to contest the matter on merits, meaning thereby that such technicalities have been given go-by.

13. The rules of limitation are not meant to destroy or foreclose the right of parties. They are meant to see that parties do not resort to dilatory tactics but seek their remedy promptly.

9. Taking into consideration the facts stated in this matter and the ratio laid down by the Hon’ble Supreme Court in *S. Ganesharaju (Dead) through LRs (supra)*, I hereby conclude that, the case is made out for condonation of delay. Hence, Civil Application is allowed in terms of prayer clause ‘B’.

10. Accordingly, Civil Application is disposed off.

**[RAJESH S. PATIL]
JUDGE**