

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD.**

CIVIL REVISION APPLICATION NO. 109 OF 2019

Gulabsinh Narharirao Solunki,
Age : 58, Occu. Business,
R/o. At Post Temburni, Tq. Ahmedpur,
Dist. Latur.

...Applicant

Versus

- 1] Gramsevak,
Grampanchayat Karyalay Temburni,
Tq. Ahmedpur, Dist. Latur.
- 2] Sarpanch,
Grampanchayat Karyalay Temburni,
Tq. Ahmedpur, Dist. Latur.
- 3] Subhash Nagnath Gundile,
Age : Major, Occu. Agri.,
R/o. Temburni, Tq. Ahmedpur,
Dist. Latur.
- 4] The Tahsildar,
Ahmedpur, Dist. Latur.
- 5] The Government of Maharashtra,
Through Collector,
Latur.

...Respondents

.....
Mr. Anandsingh Bayas, Advocate for the Applicant
Mr. V. D. Gunale, Advocate for respondent nos. 1 to 3
.....

CORAM : RAJESH S. PATIL, J.

DATED : 18th NOVEMBER, 2022

ORAL JUDGMENT :-

1. This Civil Revision Application is filed by the original plaintiff challenging the impugned order dated 02.01.2019 passed by the District Judge-1, Ahmedpur, thereby allowing the Civil Misc. Application No. 7 of 2018 filed for condonation of 101 days delay in filing the appeal by the defendants.

FACTS :

2. The applicant herein is the President of Rajput Devalay Trust, who had filed a civil suit before the Civil Judge Senior Division, Ahmedpur, being Reg. Civil Suit No. 36/2013. The said suit was filed against Government of Maharashtra, Gramsevak, Tahsildar, Sarpanch and one another. The said civil suit was decreed by a Judgment and Order dated 20.03.2018 by the Civil Judge Senior Division, Ahmedpur thereby declaring the plaintiff as owner of the suit property i.e. House No. 44 having area of 1080 sq.mtrs.

3. Against the said judgment and decree passed by the trial Court, the original defendants/respondents herein filed appeal before the District Court. However, there was delay of 101 days in filing the appeal and, therefore, an application for condonation of delay along with the appeal was filed. By an order dated 02.01.2019, the sgpunde

application for condonation of delay was allowed and the appeal was numbered as Reg. Civil Appeal No. 3 of 2019. The original plaintiff, who is the applicant in the present Civil Revision Application, has challenged the order passed by District Judge dated 02.01.2019, whereby the delay of 101 days was condoned.

SUBMISSIONS :

4. The Id. Advocate appearing for the applicant has argued that the delay has not been properly explained. The approach of the original defendants in filing the appeal was careless and negligent. It is further argued that the delay of each and everyday should have been explained, however, there is no such explanation given by respondents / original defendants. The Id. Advocate for the plaintiff (applicant herein) relied upon a judgment delivered by the Supreme Court in the case of **P. K. Ramachandran vs. State of Kerala and another** reported in 1998 AIR SCW 2177. The Id. Advocate submitted that in the case of of P. K. Ramachandran (supra) filed under the Arbitration Act, the delay in filing the appeal was not condoned and it was held that the reasons given can hardly be said to be reasonable, satisfactory or even a proper explanation for seeking condonation of delay. It is further concluded in the said judgment that Courts have no power to extend the period of limitation on equitable grounds.

5. Learned advocate for the respondents argued that the ld. District Court has properly considered the reasons given for condonation of delay and only thereafter condoned the delay. He further argued that the respondents/original defendants are the Government bodies and it has been specifically stated as to the reason for delay in the application for condonation of delay that one Ujjawalabai Gaikwad was Sarpanch of Tembhurni village during the relevant period i.e. 2010 to 2015, and thereafter Dattatray Bhagwan Solunke became Sarpanch from 25.07.2015 till 24.01.2017. It is further stated that Sarpanch Dattatray Solunke was disqualified due to non-availability of toilet blocks in the said village, and in his place one Sambhaji Shinde, a deputy Sarpanch, had taken charge of Sarpanch. The post of Sarpanch was vacant and therefore the Administrator had taken charge on 09.06.2017. It is submitted that, thereafter one Mr. Amit Billapate was elected as Sarpanch so also the earlier Gramsevak was also changed and a new Gramsevak had taken charge on 16.05.2018. It is also further argued that the then members of the Grampanchayat had not even given any information to the newly appointed Sarpanch and Gramsevak about the present matter, hence they could not file appeal in time. It is also further stated that the plaintiff's wife was earlier Sarpanch during which period a fraudulent document was prepared and in Form 8A, the sgpunde

plaintiff's name was inserted without holding any Gramsabha. However, subsequently, much later, the name of plaintiff was cancelled by Grampanchayat resolution and a new Form 8A was prepared which does not have plaintiff's name. Therefore, even on merits, the original defendants (now the respondents) have a very good case and they are bound to succeed. The delay is comparatively of a shorter period. There are no *mala fides*. Therefore, due to the administrative difficulties and for the reasons stated above, the lower Appellate Court condoned the delay.

6. The advocate for the respondents also relied upon the judgment of the 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 no. 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.

ANALYSIS :

7. I have carefully gone through the application for condonation of delay and reply filed thereon in the lower Appellate Court. I have also gone through the reasons recorded by the learned District Judge for condoning the delay.

8. In the case of P. K. Ramachandran (supra), there was delay of 565 days in filing an appeal. The facts in P. K. Ramchandran were quite different than the facts in the case at hand. In the present case, first of all, the delay was of 101 days due to the administrative difficulties and due to change in the body of Gram Panchayat. The delay has been properly explained. It is also stated in the present matter that the plaintiff's wife was Sarpanch earlier. It is also further stated that a fraudulent document was prepared without holding any Gram sabha and pursuant to which decree was passed. Therefore, it is necessary to decide on merits the facts stated in the delay condonation application and in the appeal.

9. The fact that the respondents, who are the appellants before the District Court, had very specifically stated that they have good case on merits and a fraudulent document was prepared. The delay is of only 101 days in filing the appeal. Administrative
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difficulties have been stated by the defendants (respondents herein) before the District Court. That the findings recorded in S. Ganesh Raju (supra) is squarely applicable to the facts of the present case. Taking int consideration the judgment in the case of S. Ganesharaju (supra) and the reasons stated for condoning the delay by the respondents herein before the appellate Court, I hold that there is no fault in the view taken by the District Judge in condoning the delay.

10. In view of above, the Civil Revision Application is dismissed.

[RAJESH S. PATIL]
JUDGE