

IN THE HIGH COURT OF JUDICATURE AT BOMBAY BENCH
AT AURANGABAD

917 CIVIL APPLICATION NO. 13839 OF 2016
IN SECOND APPEAL STAMP NO. 16560 OF 2014

RANGNATH BAPU FOPSE DECEASED THROUGH LRS
BHASKAR S/O RANGNATH FOPSE AND OTHERS
VERSUS
SHANTARAM S/O JAGANNATH FOPSE AND OTHERS

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Advocate for Applicants : Mr. Nitin Jagadale h/f Mr. V. D.
Salunke

Advocate for Respondent Nos. 1 and 2 : Mr. R. L. Kute
Advocate for Respondent Nos. 3 and 4 : Mr. V. B. Jadhav h/f
Mr. A. V. Hon

Advocate for Respondent No.7 : Mr. Kunal Kale

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CORAM : BHARAT P. DESHPANDE, J.

DATED : 27 JULY 2022

PER COURT :-

1. Heard learned counsel for the respective parties.
2. It is unfortunate that the present application is pending since 2016 wherein the applicants are seeking condonation of delay in filing the Second Appeal challenging the common order passed by learned District Judge-1, Shrirampur in Regular Civil Appeal No. 88 of 2005 and Regular Civil Appeal No. 3 of 2006.

3. Learned counsel for the applicants has pointed out that Second Appeal No. 208 of 2011, which is filed by the present applicants against the judgment and order dated 28.02.2011 in Regular Civil Appeal No. 3 of 2006, is already admitted. He submitted that due to inadvertence and lack of knowledge, the applicants failed to challenge the same order of the learned first appellate court wherein the appeal filed by the present applicants bearing Regular Civil Appeal No. 88 of 2005 was dismissed.

4. Learned counsel for the respondents strongly opposed the application on the ground that there is inordinate delay and the grounds mentioned in the present application are not sufficient enough to condone such delay.

5. Record clearly shows that the present respondents filed Regular Civil Suit No. 306 of 2001 before Civil Judge, Junior Division, Shrirampur wherein the present applicants filed a counter claim. Vide judgment dated 15.11.2005 in Regular Civil Suit No. 306 of 2001, the learned Civil Judge, Junior Division, Shrirampur dismissed the suit as well as the counter claim. It is also a fact that the present applicants as

well as the respondents filed separate appeal challenging dismissal of the suite as well as the counter claim. Learned first appellate court considered both the appeals and decided it by way of common judgment. Regular Civil Appeal No. 88 of 2005 was filed by the present applicants challenging dismissal of their counter claim and Regular Civil Appeal No. 3 of 2006 was filed by the present respondents challenging dismissal of their suit by the trial court.

6. By the common judgment dated 28.02.2011, the learned District Judge-1, Shrirampur dismissed Regular Civil Appeal No. 88 of 2005 with costs, whereas regular Civil Appeal No. 3 of 2006 is allowed with costs.

7. The judgment and decree passed by learned Civil Judge, Junior Division in Regular Civil Suit No. 306 of 2001 is therefore partly set aside to the extent of the suit filed by the plaintiffs which was decreed in part, thereby directing defendant nos. 1, 2 and 3 to hand over peaceful and vacant possession of the suit properties to the plaintiff nos. 1, 2 and 3. Defendant nos. 4 and 5 were entitled to take possession of the suit properties through the Court Commissioner.

8. Learned counsel for the applicants submitted that the parties in both the matters are same, litigating under the common title and the properties involved in it. Therefore, when Second Appeal No. 208 of 2011 is already admitted challenging the entire judgment passed by the first appellate court, no prejudice is going to cause to the respondents if the present application for condonation of delay is allowed even by imposing some costs. The submission of the learned counsel is having force as Second Appeal No. 208 of 2011 is already admitted challenging the same judgment thereby allowing the suit of the original plaintiffs partly. Now, by way of the present application and particularly by filing Second Appeal, the applicants want to challenge the dismissal of their appeal by the first appellate court wherein they challenged dismissal of their counter claim by the trial court.

9. Since both the parties are before this Court in Second Appeal No. 208 of 2011 litigating under the same title, the delay, though inordinate, could be condoned as the applicants are farmers and they are not aware of their particular right of challenging the dismissal of their appeal by the impugned

judgment and order. No prejudice is going to cause to the respondents as Second Appeal No. 208 of 2011 is already admitted challenging the same judgment and order. However, the respondents could be compensated by awarding costs to the applicants. Hence, the order :

ORDER

- I. The application stands allowed.
- II. Delay of 1118 days in preferring the Second Appeal is hereby condoned subject to payment of costs of Rs.10,000/-.
- III. On depositing such costs, the Second Appeal be placed for admission.
- IV. The application is disposed off accordingly.

BHARAT P. DESHPANDE, J.