

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

SECOND APPEAL NO.119 OF 2019

**BABAN @ SAKHARAM NAMDEV RAUT
VERSUS
SAMBHAJI NAMDEV RAUT AND OTHERS**

...

Advocate for Appellant : Mr. Balaji S. Chondhekar
Advocate for Respondent Nos.1 and 3 to 6 : Mr. Angad L. Kanade

...

CORAM : BHARAT P. DESHPANDE, J.

DATED : 19th AUGUST 2022

PER COURT :

This is Second Appeal admitted vide order dated 7th October 2019
on the following substantial question of law :

*“Whether the impugned order passed by the first Appellate Court
is against the settled principles of law laid down in the matter of
condonation of delay?”*

2. The appellant before this court is the original defendant. The respondents herein are the original plaintiffs. The plaintiffs filed suit bearing R.C.S. No.86 of 2012 for partition and separate possession against the appellants and the others in respect of land gut no.126, admeasuring 2 Hectar, 26 R, land gut no. 131, admeasuring 1 Hectar, 40 R and Grampanchayat House No.150, admeasuring 864 sq. ft., situated at village Palshi, Tq. Sengaon, Dist. Hingoli. The learned Civil Judge Junior Division Sengaon decreed the said suit on 29th January 2013.

3. The present appellant filed appeal challenging the said judgment before the District Court at Hingoli. However, since the said appeal was filed beyond the period of limitation, the appellant filed an application for condonation of delay, which was registered as C.M.A. No. 43 of 2014.

4. The learned District Judge – 2, Hingoli by the impugned order dated 9th June 2016 rejected the delay application and accordingly the appeal which is under challenge before the present Second Appeal.

5. Heard Chondhekar, learned counsel for appellant and Mr. Kanade, learned counsel for Respondent Nos.1 and 3 to 6. With the consent of parties, matter is taken up for final disposal, even though record and proceedings are not received.

6. Learned counsel for appellant forcefully submitted that the impugned order is non speaking and non reasoned order and there is no mentioned as to why the application for condonation of delay is rejected. He submitted that in spite of giving reasons in the application for condonation of delay filed along with the affidavit of applicant, the same has been rejected without any discussion.

7. Learned counsel appearing for respondents try to justify such order.

8. On perusal of impugned order of rejection of the delay application

in C.M.A. No. 43 of 2014, it revealed that entire discussion is revolving around regular civil suit and non appearance of the present appellant before the civil court. There is absolutely no discussion or reasons as to why the grounds raised by the applicant in his application for condonation of delay were not considered by the learned District Judge for grant or refusal of delay.

9. It is well settled proposition of law that while considering application for condonation of delay, the court should adopt liberal approach and opportunity needs to be given to the party to argue the matter on merit. Once the delay application is rejected, the party has no opportunity to argue the matter on merit.

10. Even by imposing costs, the application could have been allowed. However, impugned order is clearly non reasoned order and therefore cannot be sustained in the eyes of law. The substantial question of law is therefore needs to be answered in affirmative. The matter needs to be remanded to the first Appellate Court with the directions to decide the application for condonation of delay in accordance with law and by passing reasoned order. Learned first Appellate Court shall give opportunity to both the parties, and thereafter, decide the said application on merit. In view of this, I pass the following order :

ORDER

- (i) The Second Appeal stands allowed.

- (ii) The impugned order is hereby quashed and set aside.
- (iii) C.M.A. No. 43 of 2014 is restored to the file of learned District Judge, Hingoli.
- (iv) Parties shall appear before the learned District Judge on 26th September 2022.
- (v) The learned District Judge shall after giving opportunity to both the sides decide such application on merit and in accordance with law within a period of three months thereafter.
- (vi) In view of above, Second Appeal stands disposed of.
- (vii) The stay granted by this Court to the execution proceedings shall continue till the decision of C.M.A. No. 43 of 2014 pending before the District Judge, Hingoli.

(BHARAT P. DESHPANDE, J.)