

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

**CIVIL APPLICATION NO. 13991 OF 2022**  
**IN SECOND APPEAL (ST) NO. 22730 OF 2022**

SHRIRANG DIGAMBAR POTDAR  
VERSUS  
MADHAVRAO SAMBHAJI PHUGNAR

...  
Advocate for Applicant : Mr. P.P. Mandlik  
Advocate for Respondent : Mr. S.V. Deshmukh  
....

**CORAM : RAJESH S. PATIL, J.**  
**DATE : 19<sup>th</sup> December, 2022**

**PER COURT :**

1. This Civil Application is filed for condoning the delay of almost six and half year in filing Second Appeal.
2. The present applicant is the son of original plaintiff. The original suit was filed by the present applicant through his father (*as gaurdian*) in the year 2006, for declaration of ownership and perpetual injunction. The said suit was dismissed by the judgment and decree dated 2<sup>nd</sup> November, 2007.
3. The said judgment and decree was challenged by way of an Appeal before the District Court. The Appeal was also dismissed on 9<sup>th</sup> December, 2015.

4. Against the dismissal of Appeal the present Second Appeal was filed on 25<sup>th</sup> August, 2022, alongwith delay condonation application, praying therein delay of approximately six and half year be condoned.

5. The reason for condonation of delay is stated that the present appellant – Shrirang was not having knowledge of Appellate Court judgment and order dated 9<sup>th</sup> December, 2015. So also, it is stated that there was no communication to the plaintiff. It is further submitted that, plaintiff – Shrirang has received notice from Tahasildar dated 7<sup>th</sup> July, 2022, stating that defendant – Madhav has filed application for mutation of his name on the basis of Court decree in Regular Civil Suit No. 47 of 2006, on enquiry for the first time, the plaintiff to came to know that, his appeal R.C.A. was dismissed without hearing him and it was decided against a dead person i.e. his guardian/father – Digambar on 9<sup>th</sup> December, 2015, whereas, his father/guardian who has filed the suit and Appeal expired on 1<sup>st</sup> September, 2014. It is further submitted that, plaintiff immediately applied for certified copies on 10<sup>th</sup> August, 2022, which was received on 12<sup>th</sup> August, 2022 and only thereafter Second Appeal was filed. It is further submitted that, delay is not intentional and the plaintiff is lawful owner and possessor of the

suit land on the basis of registered sale-deed his name is recorded by passing mutation entry. Therefore, in the interest of justice the Civil Application should be allowed and the delay be condoned.

6. Learned Counsel for the applicant relied upon few citations to buttress his submissions :

- i. Miscellaneous Application No.665 of 2021 in SMW© No. 3 of 2020 in **Re : Congizance for extension of Limitation** by Hon'ble Supreme Court in pandemic.*
- ii. Bhivchandra Shankar More Vs. Balu Gangaram More and Ors., in **(2019) 6 SCC 387.***
- iii. S. Ganesharaju (dead) thr. LRs and Anr. Vs. Narasamma (dead) thr. LRs and Ors., in **(2013) 11 SCC 341.***
- iv. N. Balakrishnan Vs. M. Krishnamurthy decided on 3<sup>rd</sup> September, 1998 reported in **Judis.Nic.in.***

7. Learned Counsel for the respondent - original defendant opposes this Civil Application and stated that, a party which comes to the Court with unclean hands should not be heard and application needs to be dismissed. The learned Counsel for the respondent further submitted that, the grounds stated for condoning delay, as to decree been passed against the dead person is incorrect. He stated that, the present applicant had

immediately filed an Amendment Application before the lower Court after the death of his father. Thereafter, his advocate made submissions on his behalf and Appeal of the applicant was dismissed on merits. The learned Counsel for the respondent also stated that, the applicant had knowledge about the passing of the decree on the day the Appeal was dismissed, and the applicant is now trying to blame probably his lawyer of Appellate Court. However, the delay condonation application is silent in this regard as to who had not informed the applicant about passing of the decree in lower Appellate Court. The learned Counsel for the respondent also relied upon two citations :

- i. Basawaraj and Anr. Vs. The Spl. Land Acquisition Officer*  
passed in **Civil Appeal No. 6974 of 2013 SCC.**
- ii. Majji Sannemma @ Sanyasirao Vs. Reddy Sridevi & Ors.*  
passed in **Civil Appeal No. 7696 of 2021 SCC.**

8. I have carefully considered the submissions of both the learned Counsel and gone through the delay condonation application and the reply filed to the Civil Application.

9. The delay condonation application casually states in paragraph No.2.3 *“the plaintiff – Shrirang was not having knowledge about the judgment dated 9<sup>th</sup> December, 2015, there*

*was no communication to the plaintiff.*

*The plaintiff - Shrirang has received notice from Tahasildar Loha, dated 7<sup>th</sup> July, 2022..."*

10. The applicant has stated one more ground for condoning the delay in paragraph No.2.4 he states that, *".... the plaintiff came to know that his appeal R.C.A. was dismissed without hearing him and it was decided against a dead person i.e. his guardian/father - Digambar on 9<sup>th</sup> December, 2015, whereas, his father/guardian who has filed suit and appeal expired on 1<sup>st</sup> September, 2014".*

11. Therefore it appears that, the plaintiff has taken up two grounds for condoning the delay. The first ground is that, there was no communication to the plaintiff about passing of the Appellate Court decree and the same is as vague as possible. It does not state as to who has not informed him about passing of the decree. While arguing this application for delay condonation, the learned Counsel for the applicant stated that, it was his lawyer who had not communicated about passing of the decree to the applicant.

12. Learned Counsel for the applicant was put a question by this Court as to whether the applicant went back to his lawyer of the Appellate Court, after he got knowledge about passing of the

decree by the Appellate Court and did he make any kind of enquiry as to why his lawyer had not informed about passing of the decree. The learned Counsel for the applicant was not able to give satisfactory reason as to why this act was not done by his client. Therefore it is unbelievable that a person who has filed this application for condonation of delay, who is a graduate has not contacted his advocate during the pendency of the Appeal and has not enquired as to the status of his pending Appeal before the District Court. No explanation has been stated in the Civil Application. In the reply to the Civil Application the respondent had stated that, these are incorrect submissions made in the affidavit and there is no sufficient cause for condoning the delay. Therefore, the first ground is not convincing me, for condoning the delay.

13. The second point for condoning the delay as regards the decree that has been passed by the Appellate Court in the year 2015 is passed being against a dead person. This fact is proved incorrect as the advocate for respondent has pointed out that, after death of father of applicant, the applicant himself preferred an application to bring him on record, before Appellate Court. Learned Counsel for respondent also pointed out the amended memo filed before the District Court, which shows that the present applicant

was already on record before the lower Appellate Court.

14. Therefore, the second ground taken for condoning the delay that decree was passed against a dead person is absolutely false and incorrect. Therefore, there is no sufficient ground made out by the applicant to condone the delay.

15. The applicant has relied upon four (4) judgments. The first one judgment passed in ***Suo Motu Writ Petition (Civil) No. 3/2020***. In the *Suo Motu Writ* the Supreme Court excluded the period of limitation for any suit, appeal, application or proceeding, during the period from 15<sup>th</sup> March, 2020 till 28<sup>th</sup> February, 2022. Therefore what was excluded by the Supreme Court was almost a period of two years. The delay caused in the present matter is almost six and half years therefore, the judgment passed in *Suo Motu Writ Petition* does not help the applicant.

16. The second judgment is the judgment of Bhivchandra More (*supra*) wherein the delay of four years ten months eight days was allowed, as the reason for delay was a wrong remedy of filing the application under Order 9 Rule 13 of Civil Procedure Code. After the delay of Four years ten months eight days, immediately on next date on withdrawal of the application Order 9 Rule 13 of CPC,

thereafter Civil Appeal was filed, which was also withdrawn and thereafter Civil Appeal challenging the original decree was filed. Therefore, it was considered as the sufficient cause for condoning the delay in that matter, hence the facts in Bhivchand More (*supra*) are different than the present matter.

17. The third judgment referred by the applicant is of S. Ganesharaju (*supra*). In this judgment the delay of 53 days was condoned by the Supreme Court. Therefore this judgment would not help the applicant, as in the present case there is delay of more than six and half years.

18. The fourth judgment is the judgment of N. Balakrishnan (*supra*). In the said judgment there is delay of 883 days and reason for condoning delay was that, the application preferred for setting aside the *ex-parte* decree was dismissed for default and thereafter the application to set aside the said order was preferred after the receipt of execution application. However, in the present case on oath a false statement was made by the applicant that the Appeal was decided against a dead person, therefore, even this judgment does not support the present applicant.

19. Learned Counsel for the respondent has referred two

judgments. First judgment of Majji (*supra*), wherein a delay of 1011 days was not condoned on the ground that no sufficient cause has been shown for condoning the delay and even by imposing the condition delay should not be condoned.

20. Next judgment preferred by the learned Counsel for the respondent is of Basawaraj (*supra*), wherein a delay of five and half years was not condoned on the ground that no sufficient cause is shown which prevented the litigant to approach the Court on time. Condoning the delay without any justification, putting any condition whatsoever, amounts to passing an order in violation of the statutory provisions and it tantamounts to showing utter disregard to the legislature.

21. The Hon'ble Supreme Court in the judgment of *Esha Bhattacharjee Vs. Managing Committee of Raghunathpur Nafar Academy and Ors.*, reported in **(2013) 12 SCC 649**, refused to condone delay of seven years in filing appeal.

22. Therefore, I hereby conclude that the person who has come to the Court with unclean hands and made false statements on oath by stating that the Appellate Court passed a decree against the dead person should not be shown any kind of leniency from

this Court. A huge delay of more than six and half years therefore is not condoned.

23. Therefore this Civil Application for condonation of delay is dismissed.

24. Pending applications, if any, do not survives and same stand disposed off.

**[ RAJESH S. PATIL ]**  
**JUDGE**