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

**917 CIVIL APPLICATION NO.10124 OF 2017
IN SAST/26516/2016 WITH CA/10122/2017 IN SAST/26511/2016**

**DHUDKU HIRAMAN KOLI AND OTHERS
VERSUS
VENUBAI GANPAT KOLI DIED LRS MANDABAI AND OTHERS**

...

WITH

**CIVIL APPLICATION NO.10122 OF 2017
IN SAST/26511/2016**

**DHUDKU HIRAMAN KOLI AND OTHERS
VERSUS
VENUBAI GANPAT KOLI DIED LRS MANDABAI AND OTHERS**

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In both the applications :

Advocate for Applicants : Mr. Milind K. Deshpande
Advocate for Respondent Nos.1A to 1E & 4 : Mr. J.M. Wagh
Advocate for Respondent Nos.2A to 2C : Mr. Swapnil S. Patil

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CORAM : MANGESH S. PATIL, J.

DATE : 01-02-2022

PER COURT :

. These are the applications for condonation of delay of more than 1600 days in preferring the second appeals arising out of two separate suits between the same parties, one filed by the respondents for partition and separate possession of their share in the suit properties and the other filed by the applicants seeking injunction

against them.

2. I have heard both the sides and perused the applications as also the replies.

3. Learned advocate Mr. Deshpande would submit that due to poor economic condition and being agriculturists the applicants were not able to file these appeals in time. The dispute pertains to right to an immovable property. The applicants have a good case. The appeals may be allowed to be decided on merits rather than by default. Their such valuable right would be defeated on technicalities, and he, therefore, prays to condone the delay by imposing costs.

4. Learned advocates Mr. Patil and Mr. Wagh for the respective respondents strongly oppose both these applications. They submit that apart from the fact that the applications are devoid of any reasoning for being considered as sufficient, the delay has been caused deliberately and intentionally. The decree for partition has already been executed and the possession has also been delivered and it is thereafter that these appeals were filed with these applications for condonation of delay. The very conduct of the applicants is

demonstrative of the fact that they were not diligent in filing the appeals.

5. In addition, the learned advocates would submit that even on merits the applicants have very little scope in these second appeals inasmuch as there are concurrent findings of the facts of the courts below holding the respondents entitled to have a share in the suit properties. They would further submit that so far as the relationship is concerned there has been no dispute. The applicants were propounding a will of Hiranman, adopted son of the common ancestor Sandhu. However, it was not the case of the applicants that there was any such separate Will. They were coming with a case that the contents of the deed of adoption itself should be read as the last intention of Sandhu. No attempt was made even if it was to be treated as a will, to lead evidence under Section 63 of the Indian Succession Act read with Section 68 of the Indian Evidence Act.

6. I have considered the submissions of the learned advocates appearing for the respective parties and perused the record. One needs to bear in mind the well settled principles recognized by the Supreme Court time and again in the matters of condonation of delay. One need only to refer to some of such

judgments in the matters of **Collector Land Acquisition, Anantnag & Anr. Vs. Mst. Katiji & Ors; 1987 SCR (2) 387** and **Ramlal, Motilal and Chhotelal Vs. Rewa Coalfields Ltd; 1962 SCR (3) 762.**

7. Bearing in mind all these principles what is startling is the fact that *ex facie* the delay is enormous, more than 1600 days. Apart from such enormous delay, the applications are devoid of sufficient and cogent reasons to demonstrate any ground which could have prevented the applicants from filing the appeals in time. They are vaguely avering that they are poor agriculturists, even without indicating in detail as to what could have prevented them in filing the appeals in time. In fact, when the suit of the respondents was decreed and that of applicants' was dismissed and both these decisions were challenged by them in separate appeals, it was expected of them to have been more vigilant in filing the second appeals against the concurrent findings of facts. They have miserably failed to do so.

8. Besides, according to the respondents, the decree for partition has already been executed, meaning thereby that even the applicants must have been aware about execution of the decree. They had waited till then and thereafter have chosen to file these

second appeals with these applications. This circumstance is clearly indicative of the fact that the delays have not occasioned *bona fide*.

9. Mr. Deshpande, learned advocate for the applicants submits that though the partition has been effected in the execution of the decree for partition, possession has been delivered after the applicants had filed these applications. He also submits that besides the applicants are seriously disputing about the possession having changed hands in execution of the decree for partition.

10. To my mind, even accepting the submissions of learned advocate Mr. Deshpande, when I have independently demonstrated that the applications are devoid of any sufficient and cogent grounds to condone the delay, this circumstance becomes secondary.

11. Though it is trite that the courts are supposed to take a lenient view in the matters of this type and it is always appropriate to decide the dispute on merits rather than by default, however, all the aforementioned circumstances clearly indicate that there are no sufficient and cogent reasons which can weigh the things in favour of the applicants rather those are indicative of they being remiss in prosecuting the cause.

12. There is no sufficient cause to condone the delay.

13. Even on merits, there are concurrent findings of facts and when the applicants have been admitting the relation between the parties *inter se* as also the nature of the suit property as an ancestral one, when they have independently not propounded any separate will of Hiranman and have also not made any attempt to establish it within the four corners of law, that is Section 63 of the Indian Succession Act and Section 68 of the Indian Evidence Act, I find no sufficient and cogent reasons to condone the delays.

14. The Civil Applications are rejected.

(MANGESH S. PATIL)
JUDGE