

Pooja K.

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

CIVIL APPLICATION NO. 659 OF 2023
IN
SECOND APPEAL (ST) NO. 486 OF 2023

Babarao Yadaji Lokhande (died)	
Ashroba Babarao Lokhande and Ors.	... Applicants
<i>Versus</i>	
Narhari Munjaji Lokhande and Anr.	... Respondents

...
Mr. A.A. Mukhedkar – Advocate for Applicants
....

CORAM : GAURI GODSE, J.
DATE : 3rd February, 2023

PER COURT :

1. This Civil Application is filed for condonation of delay of 1663 days i.e. more than four and half years in filing the Second Appeal.
2. The Second Appeal is filed by the plaintiff no.2 and heirs and legal representatives of plaintiff no.1. The Second Appeal is filed for challenging the judgment and decree dated 22th October, 2013 passed by the learned 9th Joint Civil Judge Junior Division at Parbhani in Regular Civil Suit No.281 of 2011 as well as judgment and decree dated 19th March, 2018 passed by

the learned Principal District Judge in Regular Civil Appeal No.153 of 2013. By the concurrent judgments and decrees the suit filed for declaration of ownership on the basis of possession is dismissed.

3. It is the case of the applicants that, plaintiff no.1 was looking after the litigation. Plaintiff no.1 expired on 4th May, 2019. Thereafter, the applicants during Diwali festival of the year 2022 found certain documents with respect to the litigation and learnt about the impugned decree. Hence, they filed the Second Appeal alongwith application for condonation of delay.
4. The impugned decree is dated 19th March, 2018. Plaintiff no.1 expired on 4th May, 2019. Neither deceased plaintiff no.1 nor applicant no.2, who is plaintiff no.2 had taken any steps to challenge the dismissal of the first appeal that was filed by them. The entire application do not mention any reason with respect to why plaintiff no.2 had not taken any steps. It is not the case of the applicants that plaintiff no.2 had no knowledge of the litigation.

5. Since Second Appeal can be entertained only if it raises any substantial question of law, I called upon the learned counsel for the applicants to also address on merits of the Second Appeal.
6. Learned counsel for the applicants was unable to point out any substantial question of law in the Second Appeal. Perusal of the impugned judgments show that, after examining the documentary evidence as well as oral evidence, both the courts have come to a conclusion that original plaintiffs failed to prove their case. Both the courts on examining the evidence have recorded a finding that the unchallenged revenue entries fortify the case of the defendants regarding their ownership.
7. I do not find that the Second Appeal raises any substantial question of law. There is no satisfactory and/or condonable ground made out in the application for condonation of delay. There is an inordinate delay of more than four and half years. The reason given in the application is not believable. For the reasons stated above, I do not find any merit in the Civil Application for condonation of delay, hence, application needs to be dismissed.

8. Learned counsel for the applicants relied upon the decision of the Hon'ble Supreme Court in the case of *Pralhad Shankarrao Tajale and Ors. Vs. State of Maharashtra*¹. Learned counsel for the applicants relied upon the said decision in support of the submission that a liberal approach is required to be taken on the point of limitation. The said decision of the Hon'ble Supreme Court is with respect to Review Application which was filed belatedly. The facts of the case before the Hon'ble Supreme Court were with respect to rejection of delay condonation application on the ground of not curing the defects within the conditional time granted, which resulted in dismissal of the application. In the facts of the case the Hon'ble Supreme Court held that a liberal view was required to be taken for granting an opportunity to the applicants to cure the defects. The facts of the present case are totally different. Perusal of the entire application in the present case do not provide any satisfactory explanation, for not taking any steps till the year 2023 for challenging the impugned decree which was passed on 19th March, 2018. Hence, the decision of Hon'ble Supreme Court

¹ 2018 DGLS (SC) 163

relied by the learned counsel for applicants is of no assistance to the applicants.

9. For the reasons stated above, the Civil Application is without any merits and is dismissed. There will be no order as to costs.
10. In view of dismissal of Civil Application for condonation of delay, Civil Application No.660 of 2023 has become infructuous and hence, is dismissed.

[GAURI GODSE]
JUDGE