

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

SECOND APPEAL NO.85 OF 2021

Late Javarilal Chhaged
Through his legal heirs/representatives
Smt. Shantabai W/o. Javarilal Chhaged ..Appellant

Versus

1. Shri Narendra Shantilal Chhaged
2. Shri. Shantilal Bhagchand Chhaged
3. Shri. Kantilal Bhagchand Chhaged
4. Shri. Premchand Bhagchand Chhaged
5. Dr. Ramesh Bhagchand Chhaged
6. Shri. Arun Bhagchand Chhaged
7. Shri. Lalit Bhagchand Chhaged
8. Smt. Tarabai Madanlal Samdadiya
9. Shri. Manish Shantilal Chhaged
10. Sou. Nirmla Mahendra Kavadiya
11. Late Shri. Rangalal Uttamchand Chhaged
Through his legal heirs
12. Shri. Sunil Javarilal Chhaged
13. Shri. Sanjay Javarilal Chhaged
14. Shri. Surendra Javarilal Chhaged
15. Smt. Saroj Shrenik Dugad
16. Sou. Sangita Sanjaykumar Kotecha ..Respondents

Mr. A.D. Ostwal, Advocate for Appellant.
Mr. D.L. Khivesara, Advocate for Respondent Nos.3 to 8.
Mr. Kiran D. Jadhav, Advocate for Respondent Nos.12 to 16.
Mr. Dipesh Pande, Advocate for Respondent No.11.

(2)

**WITH
SECOND APPEAL NO.29 OF 2021
WITH CA/931/2021**

Late Javarilal Chhaged
Through his legal heirs/representatives

1. Shri. Sunil Javarilal Chhaged
2. Shri. Sanjay Javarilal Chhaged
3. Shri. Surendra Javarilal Chhaged
4. Smt. Saroj Shrenik Dugad
5. Sou. Sangita Sanjaykumar Kotecha ..Appellants

Versus

1. Shri Narendra Shantilal Chhaged
2. Shri. Shantilal Bhagchand Chhaged
3. Shri. Kantilal Bhagchand Chhaged
4. Shri. Premchand Bhagchand Chhaged
5. Dr. Ramesh Bhagchand Chhaged
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7. Shri. Lalit Bhagchand Chhaged
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10. Sou. Nirmla Mahendra Kavadiya
11. Late Shri. Rangalal Uttamchand Chhaged
Through his legal heirs
12. Smt. Shantabai W/o. Javarilal Chhaged ..Respondents

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Mr. Kiran D. Jadhav, Advocate for Appellants.
Mr. D.L. Khivesara, Advocate for Respondent Nos.3 to 8.
Mr. A.D. Ostwal, Advocate for Respondent No.12.

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CORAM : S.G. MEHARE, J.

DATED : SEPTEMBER 06, 2023

ORDER :-

1. Heard the respective counsels finally at the admission stage.

2. The appellants have impugned the common order of learned District Judge-1, Jalgaon, passed in Civil Miscellaneous Application No.468 of 2019 for condonation of delay of 7 years, 2 months and 14 days in preferring the appeals. The appellant in Second Appeal No.29 of 2021 is the son of the appellant in Second Appeal No.85 of 2021. They had filed a joint application before the District Judge-1, Jalgaon. However, these appeals appear to have been filed separately for their convenience to gain some benefit.

3. It was contended in the application that the appellants were the legal heirs of the deceased Javarilal Chhajed. In his lifetime, he never discussed on the suit, and even after the decision, he did not say anything to them. On 30.09.2019, the appellants learnt about the decree passed in R.C.S. No.15 of 2009 dated 28.02.2012. The appellants could not file the appeals in the Court within the time limit; therefore, there was a delay of 7 years, 2 months and 14 days in filing these appeals.

4. Learned counsel for the appellant, Mr. Otswal, in Second Appeal No.85 of 2021, has vehemently argued that he did not receive

the summons from the executing Court. Living under the same roof does not necessarily mean they would know about the litigation. He would submit that the delay was not deliberate. His bone contention is that the Court should take a liberal view. The delay is not significant. The Court has to take into account if there is an acceptable and pardonable explanation. When the parties were litigating the right over the immovable property and substantial rights were to be decided between the parties, the delay must be condoned. To bolster his arguments, he relied on the case of Raheem Shah and Another Vs. Govind Singh and Others, 2023 SCC Online SC 910, Sonerao Sadashivrao Patil and another Vs. Godawaribai w/o Laxmansingh Gahirewar, 1999 (2) Mh.L.J. 272, Collector, Land Acquisition Anantnag and Another Vs. Mst. Katiji and Others, (1987) 2 SCC 107 and N. Balakrishnan Vs. M. Krishnamurthy, (1998) 7 SCC 123. Relying on these judgments, he has prayed to allow the second appeal and grant an opportunity to re-argue the application before the learned District Judge-1.

5. Learned counsel Mr. K.D. Jadhav, for the appellants in Second Appeal No.29 of 2021, adopted the arguments advanced by the learned counsel Mr. Ostwal. However, he added that the application for condonation of delay was not decided on merit. The suit was also not decided on merit. Therefore, the liberal view may be

taken, and justice be made as the substantial rights of the appellants over the immovable property have been involved.

6. Learned counsel for the respondents in both appeals would submit that the appellants have an ill intention to get the impugned order set aside. The arguments that Smt. Shantabai, the appellant in Second Appeal No.85 of 2021, did not know the litigation could be falsified by their application before the learned District Judge. He has pointed out that the appellant in Second Appeal No.29 of 2021 had signed the application as a power of attorney for Shantabai. He has correctly pointed out the same. That apart, he would submit that there was no explanation for the delay. It was barely an application without any explanation for the delay caused. All the appellants were well aware that the decree was passed. The predecessor in the title never raised any objection to the so-called partition taken between him and his brother long back. He even did not prefer to file a written statement. This application is *mala fide*. The appellants did not come before the Court with clean hands. Hence, the ratio laid down in the case laws relied upon by the appellants does not apply.

7. Section 5 of the Limitation Act provides for the condonation of delay caused in preferring the appeal or any application. It has been provided that such an application for condonation of delay may be admitted after the prescribed period if

the appellant or the applicant satisfies the Court that he had sufficient cause for not preferring the appeal or making the application within such period. The duty was cast upon the person claiming condonation to satisfy the Court that there was sufficient cause restraining him/her from approaching the Court within a prescribed period of limitation for the proposed action. Undoubtedly, the word 'sufficient cause' in Section 5, as per precedents, should receive a liberal construction so as to advance substantial justice when the delay is not on account of any dilatory tactics, want of bona fides, deliberate inaction or negligence on the part of the appellant. The view expressed by the Hon'ble Supreme Court in N. Balakrishnan (cited supra), was that though the liberal view is taken by the Apex Court by various pronouncements, the person claiming the condonation of delay has not been excepted from explaining the acceptable or pardonable explanation. In the case of Sonerao Sadashivrao Patil (cited supra), the Court has observed that the primary function of a Court is to adjudicate the disputes between the contesting parties and to advance substantial justice. The rules of limitation are not made to harm the valuable rights of the parties. The discretion is given to the Court to condone the delay and admit the appeal in order that judicial power and discretion in that behalf should be exercised to advance substantial justice. It has also been observed that if the spirit behind the empowerment of discretionary power on the Court is taken into

consideration, it is beyond doubt clear that the Court is required to adopt a liberal approach in the matter of interpretation of the phrase 'sufficient cause'. This concept is adequately elastic to enable the Court to apply the law in a meaningful manner. It has also been observed in the said case that the Court has to take into account whether there is an acceptable or pardonable explanation. The observation in the above cases indicates that there shall be a pleading in the application explaining the delay, and the Court has to consider whether the explanation with a liberal view accepts that the explanation is acceptable or pardonable. The requirement of Section 5 is that the applicant has to satisfy the Court that the reasons for not coming to the Court were such that restrained such person from taking legal action.

8. Appellant No.2 appeared in response to the notice from the executing Court and sought time to engage a lawyer and, after that, did not turn up. He put himself into inaction. He did receive the notice for himself and also received the notices for other appellants. This fact indicates that they learnt about the execution proceedings in the year 2013 itself. Since then, they kept silence. They were silent and did nothing. These were facts about the services of the summons, but there is no pleading on this fact. Nothing has been pleaded in the condonation application. The Hon'ble Supreme Court, in the case of N. Balakrishnan (cited supra), has observed that the word 'sufficient

cause' should be construed liberally in the absence of anything showing *mala fide* or deliberate delay as a dilatory tactic and if it is absent, the Court should normally condone the delay. In other words, it is mentioned that if there is no *mala fide* or deliberate delay or dilatory tactics in preferring an application for condonation of delay, the Court should take a liberal view construing the word 'sufficient cause' liberal. Though it has been argued that the summons was not properly served, the mother/Shantabai was not the party to the execution proceedings. Nothing has been pleaded in the application. This has been argued for the first time before the Court. The bare words that except the single sentence 'the appellant could not file an appeal in Court within time, therefore, there is a delay of 7 years, 2 months and 14 days', nothing has been pleaded. Unless there is an explanation, the Court has no reason to consider whether there were sufficient causes for not preferring the appeals in time.

9. In the case of Raheem Shah (cited supra), the facts were that there was a delay of 52 days, and the lower appellate Court dismissed the appeal, holding that the delay was not properly explained. This indicates that the person seeking condonation has to plead and prove that there was sufficient cause for not preferring the appeal in time, and for believing this all, there shall be a pleading. At the cost of repetition, it may be mentioned here that there was absolutely no pleading explaining the delay of 7 years, 2 months and

14 days. So, it would be very difficult to assess whether there were sufficient causes for not preferring the appeal in time. It has been tried to be argued by the learned counsel for the appellants that substantial rights of the appellants for the immovable property have been involved in the litigation. Barely arguing or submitting that substantial rights over the immovable property have been involved is unacceptable without any foundational fact. There is nothing pleaded as such.

10. Since there was no pleading and no explanation for the delay, the Court believes that the appellants have no case even for taking the liberal view to condone the delay.

11. The order of the learned District Judge-1 is well reasoned. No substantial questions of law are involved in this case. Hence, both appeals stand dismissed.

12. Civil Application No.931 of 2021 stands disposed of.

(S.G. MEHARE, J.)