

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

**SECOND APPEAL NO.774 OF 2022
WITH
CIVIL APPLICATION NO.16196 OF 2022**

The Executive Engineer,
Maharashtra State Electricity Transmission Co.
Ltd., EHV O and M Division,
MSETCL, Pedile Complex, Ambajogai Road,
Latur.

Appellant
(Not party to suit)

VERSUS

1. Sambappa Trimbakappa Girwalkar,
age 86 yrs, Occ. Advocate,
R/o. Shiv-Chhaya, Mitra Nagar, Latur.
District Latur. ..orig plaintiff..
2. The State of Maharashtra,
Through the Collector, Latur.
3. The Executive Engineer,
Maharashtra State Electricity Board (MSEB).
Extra High Voltage Extension Line,
Sale Galli, Ganj Golai, Latur.
District Latur. ..Respondents..

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Mr. D.P. Palodkar, Advocate for appellant.
Mr. S.V. Natu, Advocate for respondent No.1
Mr. P.M. Kulkarni, AGP for respondent no.2- State.

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CORAM : S.G. CHAPALGAONKAR, J.

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**RESERVED ON : 17th AUGUST, 2023.
PRONOUNCED ON : 28th AUGUST, 2023**

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JUDGMENT :-

1. The present appeal takes exception to the order dated 10.12.2018 passed by the Principal District Judge, Latur in Civil M.A. No.75 of 2017 thereby rejecting the prayer for condonation of delay caused in filing the appeal against the judgment and decree dated

31.3.2012 passed by the 2nd Jt. Civil Judge Sr. Division, Latur in R.C.S. No.719 of 1998.

2. The respondent no.1 herein/original plaintiff had instituted a Regular Civil Suit No.719 1998 seeking decree of mandatory and perpetual injunction for removal of transmission line and tower line erected in his land. The State of Maharashtra was first defendant and other defendants were authorities of erstwhile M.S.E.B. Later on, except defendant no.1-State of Maharashtra and defendant no.2 Executive Engineer-M.S.E.B., (extra High Voltage extension line) Beed, other defendants were deleted. It appears that finally the suit proceeded ex-parte against the defendant no.2 and judgment and decree dated 31.3.2012 came to be passed restraining the defendants from obstructing or carrying any activities over the suit land. The decree of mandatory injunction directing removal of the poles from the suit land is also passed.

3. Aggrieved by the aforesaid decision, the present appellant had approached the District Court, Latur in appeal under section 96 of the Civil Procedure Code with prayer in application for delay condonation vide M.A. No.75 of 2016. The learned District Judge, by his judgment and order dated 10.12.2018, rejected the application observing that the delay of 1625 days caused in filing the appeal is not explained or 'sufficient cause' is not made out for such delay. Impugning the order passed by the District Judge, Latur dated 10.12.2018, the present Second appeal is filed.

4. Mr. Palodkar, learned advocate appearing for the appellant contends that initially the suit was instituted against in all four defendants, however, during course of proceeding of the suit, other defendants were deleted except the State of Maharashtra and Executive Engineer, High Voltage Line Department, at Beed. There

was no proper service of summons. The suit proceeded ex-parte. The appellant had no knowledge of the decree till 4.5.2015 when respondent-initiated action in pursuance of the decree. He would further submit that the execution of decree may have adverse impact on electricity transmission. If electric poles removed under decree, the electricity supply of large area would be affected. He would submit that the concern office of the appellant is at Latur. The amended plaint would show that office at Beed is made as party. Therefore, even it is assumed that summons was served, possibly, the proceeding was not attended by that office under misconception. He would further submit that the delay caused in filing the appeal is unintentional. No negligence can be attributed to the appellant. As soon as decree came to the knowledge of the appellant, steps were taken to file the appeal. Learned District Judge adopted hyper technical approach and dismissed the Civil M.A. seeking delay condonation.

5. Per contra, Mr. Natu, learned advocate appearing for respondent no.1 would submit that the suit summons was very well served to the office of the appellant situated at Sale Galli, Ganj Golai, Latur. He would submit that although there is printing mistake in the amended plaint showing address of the defendant no.2 at Beed, handwritten amendment carried on the plaint clearly depicts address at Latur and summons was rightly served at Latur. Further, inviting attention of this Court to cross-examination of the witness examined on behalf of the appellant before the District Court, Mr. Natu would urge that the appellant had every knowledge of the pending proceeding of the suit, however, they ignored to take diligent steps. He would further submit that there is unexplained delay of more than 1600 days. Now right has been accrued in favour of respondent on account of gross negligence or deliberate inaction on the part of the

appellant, the District Court on consideration of the relevant factors rightly dismissed the appeal.

6. Having considered the submissions advanced, substantial question of law that arises for consideration in this second appeal is as to whether delay of 1625 days caused in filing the appeal is explained by a sufficient cause and as to whether the learned District Judge exercised his jurisdiction in judicious manner while dealing with the prayer for condonation of delay ?.

7. The parties were called upon to address this court on aforesaid question of law. Learned advocates made submissions accordingly.

8. It is trite that term “sufficient cause” has to be liberally construed. It is equally true that the deliberate intentional malafide or negligent actions behind the delay are required to be guarded. When it comes to the proceedings initiated by the Public Authorities, various administrative compliance’s and difficulties in administration are required to be considered. In the present case, the Trial Court has passed a decree of mandatory injunction, directing removal of four poles erected in the suit land so also restrained the appellant from continuing the work of extra high voltage extension line through and over the suit land.

9. It is not disputed that High Voltage Line is in existence since before the institution of the suit i.e. more than 14 years. The decree passed by the Trial Court is ex-parte. If the appellants have illegally installed such line by erecting poles in the land owned by the plaintiff, his right would be to recover the appropriate compensation under statutory provisions. Be that as it may, the appellant has specifically pleaded that he got knowledge of the ex-parte decree in

the month of November, 2015. Respondent could not point out from the record that the appellant had knowledge of the decree passed by the Trial Court prior to November 2015. Thereafter, certified copies were received in the month of December 2015 and after taking necessary steps, approval, sanctions, the appeal had been filed before District Court. The explanation of delay tendered in application appears plausible. No malafides or falsity is depicted in the reasons explained for the delay in filing the appeal. True that, witness examined on behalf of the appellant has given certain admissions that shows that suit summons was either served on the appellant or they had knowledge of pending proceeding of suit. However, that is not an issue before this Court. Period of delay from the date of the decree of Trial Court till filing of the appeal before the District Court appears to be duly explained.

10. In that view of the matter, the case is made out to condone the delay, however, subject to payment of costs to respondent no.1 who is litigating since 2012 for his rights over the suit land. Consequently, the appeal succeeds subject to following terms. Hence, the order.

ORDER

- i. Second Appeal is allowed.
- ii. The order dated 10.12.2018 passed by the Principal District Judge, Latur below exhibit 1 in Civil M.A. No.75 of 2017 is hereby quashed and set aside.
- iii. The Civil M.A.No.75 of 2017 is hereby allowed and delay of 1625 days caused in filing the appeal against judgment and decree dated 31.3.2012 passed by the Civil Judge (S.D.) Latur in RCS No.719 of 1998 is condoned.

- iv. The Appeal be registered and disposed off in accordance with law, as expeditiously as possible, and in any case, within a period of (1) one year from its registration.
- v. This order is subject to the payment of costs of Rs.25,000 (Rs. Twenty-Five Thousand) to the respondent no.1 (original plaintiff). Costs shall be deposited within a period of four (4) weeks from the date of this order. In case of failure to deposit the costs within stipulated period, the impugned order in this appeal passed by the District Judge, Latur in Civil M.A. No.75 of 2017 shall govern the parties.
- vi. Second Appeal is disposed of. Pending Civil Application, if any, also stands disposed of.

[S.G. CHAPALGAONKAR]
JUDGE.

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