

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

**CIVIL APPLICATION NO. 9111 OF 2022
IN SAST/9377/2022**

Mohan Hari Londhe

.. Applicant

Versus

Hanmant Bapurao Londhe and others

.. Respondents

Mr. S. R. Bagal, Advocate h/f Mr. B. N. Gadegaonkar, Advocate for the Applicant.

Mr. S. V. Kurundkar, Advocate for Respondent Nos. 1 and 2.

Mr. S. A. Nagarsoge, Advocate for Respondent Nos. 3 and 7.

**WITH CA/9114/2022 IN SAST/9377/2022 WITH CA/12182/2023 IN
SAST/9377/2022**

CORAM : KISHORE C. SANT, J.

DATED : 06th NOVEMBER, 2023.

P C. :-

. Heard.

2. This Civil Application No. 9111/2022 is filed for condonation of delay of 2179 days caused in filing second appeal challenging the judgment and order dated 07.01.2016 in R.C.A. No. 11/2009 passed by the learned District Judge -1, Kandhar. The applicant in the application has stated that, though the judgment and order is dated 07.01.2016, he could not get the knowledge of order immediately. There was no communication from his lawyer to the applicant about the judgment

and order. For the first time he got the knowledge in October 2021 when he came to know that mutation entry is taken on the basis of the impugned judgment and order. The applicant thus prays for condonation of delay.

3. The respondents have vehemently opposed this application by filing affidavit. The respondent Nos. 1 and 2 filed affidavit in reply on 19.07.2022 and additional affidavit in reply on 26.10.2023. Affidavit in reply also came to be filed on behalf of respondent Nos. 3 and 7 on 18.07.2022 opposing the application. The respondent Nos. 1 and 2 in their affidavit have stated that, the applicant filed application belated only to delay the execution of the fruits of the decree. The applicant has knowledge of the judgment and order. Son of the applicants has filed one more civil suit bearing R.C.S. No. 88/2017 for partition and separate possession wherein, the present applicant is a defendant. Even the present applicant has filed another civil suit bearing R.C.S. No. 379/2021 against the present respondent Nos. 1 and 2 and others for perpetual injunction. Therein it is contended that the partition had taken place in the year 1987 and he is enjoying the property. It is the submission of respondent Nos. 1 and 2 that such averment is made in the suit in spite of categorical finding of the Trial Court in RCS No. 32/2000 that there is no partition taken place in the past. The

respondents have also filed copies of those suits on record.

4. It is submitted that by filing such suits the applicant is filing application before the revenue authorities and therefore, the names could not be mutated till 2001. Even very recently this applicant has filed one more suit bearing R.C.S. No. 169/2023 against the present respondents and also the State Government praying for injunction and not to take entries and for declaration that the mutation entry No. 1812 is illegal. This also shows that the applicant is not illiterate or innocent as he is posing before this Court in the application and the affidavits. In the additional affidavit in reply it is stated that, the applicant has also appeared in the suit through advocate on 31.05.2017 where in paragraph No. 5 of the said suit there is mention of impugned judgment and order. Learned advocate has also annexed the copy of Vakalatnama filed by the applicant in the suit i.e. R.C.S. No. 88/2017. He thus submits that the applicant had knowledge at least in the year 2017 and this material fact is suppressed from this Court. It should be taken that the applicant has not come with clean hands. He prays for rejection of the application.

5. In the affidavit of respondent Nos. 3 and 7 also there is allegation of suppression of material facts from the Court and about filing of subsequent suits by son of the applicant and the applicant

himself. They have also alleged that R.C.S. No. 88/2017 is a collusive suit filed just to delay the execution of the decree.

6. In view of these affidavits in reply this Court has specifically asked the learned advocate for the applicant to file affidavit about the alleged suppression. He has now prepared affidavit dated 04.11.2023. In this additional affidavit in support of civil application the applicant has stated that, R.C.S. No. 88/2017 filed by his son is not original suit. He and his brother Ashok received the summons in the said suit. His brother and himself has engaged same lawyer. However, though he had been to the learned advocate because of his illiteracy and as he is not well conversant to judicial language he could not understand as to why suit is filed and the contents of the plaint. He alleged that his advocate did not inform him as what is the suit for and thus he could not know about the impugned judgment and decree. Though it is mentioned in R.C.S. No. 88/2017. Thus now his defence is of total ignorance because he could not understand the contents of subsequent plaint. This Court finds that, this hardly can be said that the applicant would sign Vakalatnama and would sign the documents without knowing the contents of the plaint.

7. It is hard to believe that advocate would not inform litigant as to what is the case of the plaintiff as he needs to take instructions from

the client to prepare the defence, for preparing W.S. and Vakalatnama. From the affidavits of both the sides it is clear that, though the impugned judgment is dated 07.01.2016 till now decree could not be executed. Even the mutation entries could not be taken because of various applications filed by this applicant.

8. This Court finds that, the applicant on one hand is successful in preventing the respondents from taking revenue entries. On the other hand he has also suppressed the fact of knowledge of impugned judgment and decree in spite of having appeared in R.C.S. No. 88/2017 as defendant No. 7. It is now his explanation that because he is not well conversant with English he could not understand the contents of the suit. This explanation can be accepted looking to his conduct.

9. This Court finds that, the applicant initially had come with a case that he had no knowledge of the decree. In affidavit in reply filed by respondent Nos. 1 and 2 there is a reference of R.C.S. No. 88/2017 and also reference that the applicant has appeared in the suit. Now he has sought to explain that how he is not aware of this Court. This Court finds that it is only an eye wash. No equitable relief can be granted in favour of such litigant when he has not come with clean hands. From the record it is clear that, that the applicant had knowledge as there is averment in paragraph No. 5 in R.C.S.

No. 88/2017 about the impugned judgment and decree. Thus, even after appearing in 2017 in the said suit he approached this Court after long gap of more than four (04) years creates doubt that there is deliberate attempt to delay and protract the execution of the decree.

10. Considering all above facts, this Court finds that, no case is made out to condone the delay caused in filing second appeal. Consequently, the civil application deserves to be dismissed.

11. Learned advocate for the applicant earnestly prays for condonation of delay stating that since the right to property is involved in the matter and therefore steps need to be taken. However, for the reasons stated above this Court is not convinced by same.

12. The civil application is dismissed with cost of Rs. 5,000/- (Rs. Five Thousand only) to be paid to the Legal Aid Centre of this Court.

13. In view of the same, pending civil applications also do not survive and are disposed off.

(KISHORE C. SANT, J.)

RS.B.