

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

CIVIL APPLICATION NO.9701 OF 2022

IN SAST/23086/2021

WITH

CIVIL APPLICATION NO.15601 OF 2022

IN SAST/23086/2021

1. Laxmibai w/o Sambhaji Gaud,
Age : 46 years, Occu : Agri. and Household,
R/o Adgaon, Tq. Purna,
District Parbhani.
2. Ku. Seema d/o Sambhaji Gaud,
Age : 21 years, Occu : Household,
R/o As above. **... Applicants.**

Versus

1. Ganpati s/o Sitaram Gaud,
Age : 51 years, Occu. Agriculture,
R/o Adgaon, Tq. Purna,
District Parbhani.
2. Rukhminibai w/o Sambhani Muktapure,
Age : 41 years, Occu. Household,
R/o Gangabet, Tq. and District. Nanded.
3. Sunita d/o Sitaram Gaud,
Age : 33 years, Occu. Household,
R/o Adgaon, Tq. Purna,
District Parbhani.
4. Sow. Saraswatibai w/o Sitaram Gaud,
Age : 74 years, Occu. Household,
R/o As above.
5. Sitaram Govind Gaud,
Age : 83 years, Occu. Agriculture,
R/o As above.
6. Mahadu s/o Sitaram Gaud,
Age : 51 years, Occu. Agriculture,
R/o As above. **... Respondents.**

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Advocate for Applicants : Mr. Ghatol Patil Shahaji B.
Advocate for Respondent Nos.1 to 5 : Mr. Panditrao S. Anerao.
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CORAM : S. G. MEHARE, J.
DATE : 23.08.2023

PER COURT :-

1. Heard the learned counsel for the applicants and the learned counsel for the respondents.
2. The applicants are seeking condonation of 4922 days delay in preferring the second appeal on the grounds that the counsel attending the appeal did not inform her. Applicant No.1/Laxmibai was mentally disturbed due to the sudden death of her husband. She got the knowledge of the judgment and decree passed by the Appellate Court, when she received the notice from the executing Court.
3. Learned counsel for the applicants would submit that the execution proceeding was not filed for seven (7) years. It appears that she blamed the lawyer. He would also submit that the substantial question of law involved in the second appeal is that the self-acquired property of the husband was also added to the hotchpotch of the joint family and partition. Her defence

was not correctly considered. Hence, a lenient view may be taken to make justice, and delay may be condoned.

4. In support of his contentions, he relied on the case of ***G. Ramegowda Major and others Vs. Special Land Acquisition Officer, Bangalore with another ; (1988) 2 Supreme Court Cases 142***. In the said case, the Hon'ble Supreme Court observed that where the delay occurred due to fraud and unusual conduct of Government Pleaders, the Court may condone the delay in the facts and circumstances of the case in the interest of justice. He relied on the case of ***Hetal Chirag Patel and others Vs. State of Gujarat and others ; (2018) 7 Supreme Court Cases 703***. It was the case that the appellants were not made the parties to the original writ petitions, and they became aggrieved by the order passed by the writ Court in writ petitions. On this fact, the Hon'ble Supreme Court held that it was a fit case for condonation of delay in filing the appeal. It was further held that it was a sufficient cause for condonation of delay within the meaning of Section 5 of the Limitation Act. He also relied on the case of ***The State of West Bengal Vs. The Administrator, Howrah Municipality and others ; (1972) 1 Supreme Court Cases 366***. It was on the sufficient cause as held in Section 5 of the Limitation Act. It has been

held that the delay in filing an appeal should not have been for reasons that indicate the party's negligence in not taking necessary steps, which he could have or should have taken. What would be such necessary steps will depend upon the circumstances of a particular case, and each case will have to be decided by the Courts on the facts and circumstances of the case.

5. He further relied on the case of *Collector, Land Acquisition Anantnag and another Vs. Mst. Katiji and others ; (1987) 2 Supreme Court Cases 107*, in which the Hon'ble Supreme Court has laid down the law that Courts should adopt a liberal and justice-oriented approach. No discrimination should be made merely because the State is seeking condonation of delay. In that case, the delay was of only four days on the part of the State. The Hon'ble Supreme Court has applied the same test as applied to private persons. He further relied on the case of *Sonerao Sadashivrao Patil and another Vs. Godawaribai and others ; [1999 MCR-430]*. It was an application for condonation of delay preferred in the *ex-parte* decree. In paragraph No.12, it has been observed that the primary function of a Court is to adjudicate the disputes between the contesting parties and to advance substantial

justice. It is to be borne in mind that the rules of limitation are not made to harm the valuable rights of the parties.

6. Here in the case, the present petitioner has contested the suit as well as preferred the appeal against the impugned judgment and decree of partition. The rights of the parties have been decided after granting the opportunity to be heard. According to the respective parties, it is not the case that the Appellate Court did not give an opportunity for hearing. The appeal was also decided on merit, as the original suit was decided. He also relied on the case of ***Ram Kumar Goyel and others Vs. Bhuwan Singh Pradhan ; AIR 2007 Sikkim 39***. It was against the case of *ex-parte* decree. It has also been observed that the explanation put forward in the application for condonation of delay should be considered along with the merits of the appeal. Further, he relied on the judgment of the Hon'ble Supreme Court in ***Civil Appeal No.249 of 2010, decided on 21.02.2022 ; Azgar Barid (D) by LRS. Vs. Mazambi @ Pyaremabi and others***. It was a judgment against the second appeal decided by the learned High Court of Karnataka. He also relied on the case of ***Vimalbai Bhimrao Kurhe Vs. Vitthalrao Bhau Paul and others ; Civil Application No.1769 of***

2016 in SAST/24450 of 2013. The Court, accepting the reasons, has condoned the delay.

7. Learned counsel for the respondents would submit that the baseless allegations have been levelled against the lawyer representing her. There is no satisfactory material to believe that the lawyer failed to intimate her. It is common nowadays to blame the lawyer and seek the condonation of delay. The affidavit of the said lawyer ought to have been filed on record. Otherwise, she had contested the suit, which was filed after the death of her husband. She has also preferred the appeal. Hence, it cannot be believed that she was mentally disturbed due to the death of her husband. The reasons mentioned in the application for condonation of delay appear false and incorrect.

8. The case laws relied upon by the applicant are on the peculiar facts. No doubt, the lenient view is to be taken, but it is not the rule of law because the judgments the applicants relied upon indicate that each case has been decided on its own facts and circumstances. Here, in the case, the learned counsel for the applicants would submit that since her husband died, she was mentally disturbed. This submission cannot be accepted for the simple reason that the original suit was filed

after the death of her husband. She contested the suit and impugned the judgment and order of the learned Trial Court. Hence, her contention that she was disturbed mentally and could not prefer the second appeal does not appear probable, good and sufficient. Another reason that her lawyer did not intimate her is a bare statement without any foundation. The lawyer has been a soft target for the mistakes of the litigant.

9. After having gone through the facts of the case and hearing their counsel on the substantial question of law, the Court is not satisfied that there are sufficient reasons to condone the delay. Hence, the civil application for condonation of delay stands dismissed.

10. Civil Application for stay and injunction is also disposed of accordingly.

(S. G. MEHARE, J.)

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vmk/-