

Dusane

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

**SECOND APPEAL NO.754 OF 2022
WITH
INTERIM APPLICATION NO.20133 OF 2022**

Shri. Sagar Vasant Rao Nikam ...Appellant

V/s.

Sudhakar Bhikajirao Desai (deceased) ...Respondents
thru' legal heirs Varsha Sudhakar
Desai & Ors.

Mr. Ameet A. Palkar for Appellant/Applicant

Mr. Vinayak Kumbhar i/by A.N. Bandiwadkar for
Respondent Nos. 1 to 3.

**CORAM: MADHAV J. JAMDAR, J.
DATE: 8th FEBRUARY, 2023**

P.C.:

1. Heard Mr. Palkar, learned Counsel appearing for the Appellant and Mr. Kumbhar, learned Counsel appearing for the Respondent Nos. 1 to 3.

2. The following substantial question of law arises in the Second Appeal:

Whether the learned First Appellate Court committed illegality in rejecting the Miscellaneous Civil (Delay) Application No.16 of 2020 although there are sufficient reasons for delay condonation?

3. As the very narrow controversy is involved, the Second Appeal is taken up for final hearing with the consent of the parties immediately.

4. Before considering the substantial question of law raised in the Second Appeal, it is necessary to set out certain factual aspects.

5. The Appellant is the original Defendant. The learned 2nd Joint Civil Judge, Senior Division, Karad, at Karad by judgment and decree dated 3rd May 2019 passed in Regular Civil Suit No. 452 of 2013 decreed the said suit. The said decree has been challenged by the Appellant i.e. original Defendant in the District Court. As there is delay of about 9 months, 22 days in preferring the Appeal application bearing Miscellaneous Civil (Delay) Application No. 16 of 2020 was filed and by the impugned judgment and decree, the said delay condonation application was rejected.

6. Perusal of Delay Condonation Application shows that it is the contention of the Appellant that the Appellant was not feeling well since December 2018 and that he suffered paralysis in January, 2019. The learned Trial Court passed the impugned decree thereafter on 3rd May, 2019. However, it is the contention of the Appellant that as he suffered paralysis, for few days, he was hospitalised and thereafter he was staying at

house. In fact, it is stated in the application that as he suffered paralysis, he could not remain present to conduct the said Regular Civil Suit No. 452 of 2013. It is stated that as he could not go out of the house, he came to know that the said Suit has been decreed by order dated 3rd May 2019 on 6th February 2020 when he went to his Advocate for enquiring about the progress of said Suit. Since he came to know that the said Suit has been decreed, immediately certified copies were obtained and Miscellaneous Civil Application seeking delay condonation was lodged on 27th February 2020.

7. The said Miscellaneous Civil (Delay) Application No. 16 of 2020 was contested by filing reply dated 1st July 2020. It is significant to note that except denial, there are no contentions raised in the said reply. However, perusal of reply dated 11th July 2022 filed to Exhibit 5 application in said Miscellaneous Civil (Delay) Application No.16 of 2020 seeking stay of the decree passed by the Trial Court shows that the contention raised is that the Appellant was contesting election of Malkapur Nagar Parishad and the said election was held in January 2019. Therefore, it is sought to be contended that the reason given that the Appellant suffered paralysis and therefore, there is delay in filing the appeal is not genuine reason.

8. The learned First Appellate Court while rejecting the Miscellaneous Civil (Delay) Application No.16 of 2020 *inter alia* held that the grounds raised by the Appellant in respect of his alleged ailment is without any substance. It has been further observed that the Appellant has not examined the Medical Officer who had issued medical certificate in respect of alleged ailment and treatment of the Petitioner. Therefore, the learned First Appellate Court has held that there is gross negligence and deliberate inaction on the part of the Appellant.

9. The Medical Certificate which has been produced before the learned First Appellate Court is issued by Dr. Anand Alurkar, who is Interventional Neurologist/Stroke specialist and he is Honorary Consultant at K.E.M. Hospital and Jehangir Hospital at Pune. In the said certificate, it has been mentioned that the Appellant was admitted under his care in January, 2019 for "HT and RT Thalamic Infarct". In the Medical Certificate, it is further mentioned that the Appellant requires continuous follow-up since then.

10. The learned Advocate appearing for the appellant has also produced Discharge Card issued by K.E.M. Hospital, Pune. The said Discharge Card shows that the Petitioner was admitted on 5th January 2019 and discharged on 9th January 2019. In the Discharge Card, the name of the Consultant is mentioned as Dr.

A. Alulkar i.e. the same Doctor, whose medical certificate was produced before the learned First Appellate Court. In Summary column of the Discharge Card, it is specifically mentioned that the Appellant came with slurred speech and acute infarct in Right thalamies. Therefore, it is clear that the case that the Petitioner suffered stroke on or before 4th January, 2019 and he was in the hospital for few days and required continuous medical treatment is supported by the record.

11. The approach of the learned First Appellate Court is hyper technical and it is settled legal position that while dealing with delay condonation application, the approach should be liberal, pragmatic, justice-oriented, non pedantic, as the Courts are not supposed to legalise injustice but are obliged to remove injustice.

12. The relevant portion of the Supreme Court judgment in the case of **Esha Bhattacharjee Vs. Managing Committee of Raghunathpur Nafar Academy & Others**¹ is set out hereinbelow for ready reference:

"21. From the aforesaid authorities, the principles that can broadly be culled out are:

21.1 (i) There should be a liberal, pragmatic, justice-oriented, non-pedantic approach while dealing with an application for condonation of delay, for the Courts are not supposed to legalise injustice but are obliged to remove injustice.

¹ (2013) 12 SCC 649

- 21.2 (ii) The terms sufficient cause should be understood in their proper spirit, philosophy and purpose regard being had to the fact that these terms are basically elastic and are to be applied in proper perspective to the obtaining fact-situation.
- 21.3 (iii) Substantial justice being paramount and pivotal the technical considerations should not be given undue and uncalled for emphasis.
- 21.4 (iv) No presumption can be attached to deliberate causation of delay but, gross negligence on the part of the counsel or litigant is to be taken note of.
- 21.5 (v) Lack of bona fides imputable to a party seeking condonation of delay is a significant and relevant fact.
- 21.6 (vi) It is to be kept in mind that adherence to strict proof should not affect public justice and cause public mischief because the Courts are required to be vigilant so that in the ultimate eventuate, there is no real failure of justice.
- 21.7 (viii) The concept of liberal approach has to encapsule the conception of reasonableness and it cannot be allowed a totally unfettered free play.
- 21.8 (ix) There is a distinction between inordinate delay and a delay of short duration or few days, for to the former doctrine of prejudice is attracted whereas to the latter it may not be attracted. That apart, the first one warrants strict approach whereas the second calls for a liberal delineation."

13. It has been held by the Supreme Court that although liberal approach should be there, if a party comes with a false case, then delay should not be condoned. The factual position on record set out hereinabove shows that the case which has

been put-forth by the Appellant is not a false case. It is established that the Appellant suffered paralysis stroke on or about 4th January 2019. There is no documentary evidence to show that the Appellant has contested the election. In fact the documents, which are produced alongwith letter dated 2nd December, 2022 of Public Information Officer, Malkapur Nagar Parishad, District Satara shows that by letter dated 9th January 2019, it was informed to the Election Officer that the Appellant has suffered paralysis stroke on 4th January 2019. It is established that the Petitioner suffered paralysis stroke on 4th January 2019 and he was hospitalised for few days and thereafter continuous medical treatment was required and therefore this is a fit case to condone the delay. Therefore, sufficient grounds are made out for condonation of delay.

14. For the above reasons, the impugned order dated 12th July, 2022 passed in Miscellaneous Civil (Delay) Application No.16 of 2020 is quashed and set aside.

15. The said Miscellaneous Civil (Delay) Application No.16 of 2020 is allowed by condoning delay of 9 months and 22 days in filing the appeal challenging the judgment and decree dated 3rd May 2019 passed by the learned 2nd Joint Civil Judge, Senior Division, Karad, at Karad in Regular Civil suit No. 452 of 2013.

16. The Appellants and the Respondents to remain present before the concerned District Judge, Karad at Karad on 13th March, 2023 at 11.00 am. and produce copy of this order.

17. The concerned learned District Judge, Karad at Karad to proceed with the appeal challenging the judgment and decree dated 3rd May 2019 passed in Regular Civil Suit No. 452 of 2013 by the learned 2nd Joint Civil Judge, Senior Division, Karad, at Karad in accordance with law.

18. The Second Appeal is disposed of in above terms with no order as to costs.

19. In view of disposal of the Second Appeal, nothing survives in the Interim Application, the same is also disposed of.

BHALCHANDRA
GOPAL DUSANE

Digitally signed by
BHALCHANDRA
GOPAL DUSANE
Date: 2023.03.10
10:45:38 +0530

(MADHAV J. JAMDAR, J.)