

Dusane

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

**CIVIL APPLICATION NO.5 OF 2022
IN
SECOND APPEAL (St.) NO.36478 OF 2018**

Ratna Ramchandra Kharat ...Applicants
(since deceased) through her
legal heirs
Shri. Mahendra Ramchandra Kharat
& Ors.

V/s.

Dattatraya Shankar Jamdade & Ors. ...Respondents

Mr. T.J. Kapre i/by J.S. Kapre for Applicants.

Mr. P.B. Gole for Respondents.

CORAM: MADHAV J. JAMDAR, J.

DATE: 31st JANUARY, 2023

P.C.:

1. Heard Mr. Kapre, the learned Advocate appearing for the Applicants and Mr. Gole, the learned Advocate appearing for the Respondents.

2. At the outset, Mr. Kapre, learned Advocate appearing for the Applicants seeks leave to amend. Leave granted. Amendment be carried out forthwith.

3. By the present Second Appeal, which has been filed on 5th December, 2018, the judgment and decree dated 5th April, 2014 passed in Regular Civil Appeal No. 52 of 2009 by learned Principal District Judge, Satara is challenged. The Civil Application is taken out seeking condonation of delay of about 4 years 167 days in filing the Second Appeal.

4. It is mentioned in the application that Applicant No.5 is the only earning member of the family. Applicant Nos. 2 to 4 and 6 are married sisters and they are staying at their matrimonial homes. Applicant no.1 is insane and psychologically unfit and Applicant No. 7 has never taken any active steps due to lack of knowledge. Applicant No. 5 who has been looking after the matter fell sick severely in the year 2014 due to 'Left lower limb venous Doppler' and as a result of which he was not able to move his heavily swollen leg and was bedridden continuously. He was hospitalised from 22nd October 2014 to 27th October 2014. The medical certificate dated 31st October 2018 issued by Willis F. Pierce Memorial Hospital, Wai, District Satara states that Applicant No. 5 has been attending OPD regularly since 22nd October 2014 till 31st October 2018. In the application, it has been stated that huge amount was spent for treatment of Applicant No.5. There are various other grounds mentioned in the application.

5. In the Affidavit-in-Reply the main contention raised is that the Applicant No. 5 was in the hospital from 22nd October 2014 till 27th October 2014 and therefore it is the contention of the learned Advocate appearing for the Respondents that the delay is not properly explained. However, it is to be seen that the Medical Certificate dated 31st October 2014 specifically mentions that the Applicant No. 5 is taking regular treatment from 22nd October 2014 till 31st October 2018 and he is suffering from severe 'Left Lower Limb Venous Doppler' and thus due to swelling of legs he was bedridden continuously.

6. Mr. Gole, learned Advocate appearing for the Respondents has relied on the judgment of this Court in the case of **Vithal Dhondiba Chawan (Died) through LRs and Ors. Vs. Madhavrao alias Mahadeo Tukaram Chavan and Ors.**¹, to substantiate his case. He states that even if one of the Applicants is suffering from some disability to file appeal, it has to be shown that the remaining Applicants also could not take steps. However in the Application the difficulties faced by other Applicants are also set out.

7. Mr. Gole, has also relied on the judgment of the Hon'ble Supreme Court in **P.K. Ramachandran Vs. State of Kerala and Anr.**². In that case, the Hon'ble Supreme Court has found

¹ (2009) 5 Bom CR 29

² (1997) 7 S.C.C. 556

that the explanation given is not satisfactory and reply of the Respondent has not been taken into consideration by the High Court. However, in the present case, perusal of the application shows that sufficient reasons are given by the Applicants. In the affidavit-in-reply nothing has been brought on record to indicate that the reasons given in the application are not genuine and not sufficient. Hence, although there is considerable delay in filing the appeal, the delay has been adequately explained. The Applicants were prevented from filing the appeal for the reasons which are set out in the Application and some of which are set out herein.

8. In the facts and circumstances of this case, the Civil Application is allowed in terms of prayer clause (a) on the condition that the Appellants pay to the Respondents an amount of Rs.5,000/- towards costs. The cheque of Rs.5,000/- be issued by the Appellants in favour of Respondent No.1-Dattatray Shankar Jamdade, which will be the payment for all the Respondents. Costs be paid within a period of four weeks from today.

9. The Civil Application is allowed in above terms.

BHALCHANDRA
GOPAL
DUSANE

(MADHAV J. JAMDAR, J.)

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