



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR

CIVIL APPLICATION (CAS) NO. 752/2021 IN
SECOND APPEAL STAMP NO. 13463/2020

Smt. Yashodabai Wd/o Mahadeo Pannase and others

Vs.

Manjulabai W/o Haribhau Mhaismare (Dead) through L.Rs. Prashant S/o Haribhau
Mhaismare and others

Office Notes, Office Memoranda of Coram,
appearances, Court's orders or directions
and Registrar's orders

Court's or Judge's orders

Shri M.A. Vishnu, Advocate h/f Shri S.A. Deo, Advocate for appellants
Shri V.S. Shingane, Advocate for respondent Nos. 1 to 7

CORAM : SMT. M.S. JAWALKAR, J.

DATE : 06/09/2023

Heard learned Counsel for appellants as well as
learned Counsel for respondents.

2. It is contended that there is delay of 1442 days in filing second appeal. It is submitted that the applicants are the original plaintiffs, filed Regular Civil Suit (R.C.S.) No. 5/2006, which came to be decreed in favour of plaintiffs. However, in appeal, it was partly allowed. Though possession of plaintiffs was protected, the defendants were granted liberty to take due process of law to evict plaintiffs from the premises. However, it is contended by learned Counsel for applicants/appellant that the order was misread by concerned

Advocate and informed to the plaintiffs/present appellants that their possession is protected. As such, there is no need to challenge that order. In March, 2020, plaintiffs/applicants received Suit Summons of R.C.S. No. 1/2020, filed by the present respondents against the applicants for taking possession of the suit land. On receiving that notice, he immediately took steps to file second appeal and accordingly filed it on 21/12/2020. It is his contention that he is having good case on merit. However, as he is not having knowledge in niceties of law, the delay has been caused. There is no intentional or deliberate delay.

3. The application is vehemently opposed by learned Counsel for respondents.

4. It is submitted that there is no question of any confusion. Present respondents were allowed to take due procedure of law for recovery of possession. As such, the suit came to be filed.

5. I have heard both the parties. True it is that there is inordinate delay in filing application.

6. Learned Counsel for appellant relied on Collector, *Land Acquisition, Anantnag and another Vs. Mst. Katiji and others, AIR 1987 SC 1353*, wherein Hon'ble Apex Court laid down on principles to be adopted while condoning the delay, which reads as under :

“1. Ordinarily a litigant does not stand to benefit by lodging an appeal late.

2. Refusing to condone delay can result in a meritorious matter being thrown out at the very threshold and cause of justice being defeated. As against this when delay is condoned the highest that can happen is that a cause would be decided on merits after hearing the parties.

3. "Every day's delay must be explained" does not mean that a pedantic approach should be made. Why not every hour's delay, every second's delay? The doctrine must be applied in a rational common sense pragmatic manner.

4. When substantial justice and technical considerations are pitted against each other, cause of substantial justice deserves to be preferred for the other side cannot claim to have vested right in injustice being done because of a non-deliberate delay.

5. There is no presumption that delay is occasioned deliberately, or on account of culpable negligence, or on account of mala fides. A litigant does not stand to benefit by resorting to delay. In fact he runs a serious risk.

6. It must be grasped that judiciary is respected not on account of its power to legalize injustice on technical grounds but because it is capable of removing injustice and is expected to do so.”

7. In my considered opinion, there is mistake on the part of Advocate, for that litigant should not suffer and it should not be thrown out at the threshold on such technical grounds. The inconvenience cause to the respondents can be taken care of by imposing substantial costs. As such, application is allowed, subject to payment of costs of Rs.20,000/-, to be paid to the respondents within a period of four weeks.

8. Registry is directed to register second appeal, on payment of costs as referred above.

9. Application stands disposed of.

(SMT. M.S. JAWALKAR, J.)