



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CIVIL APPLICATION NO.6182 OF 2024
IN
SECOND APPEAL (STAMP) NO.14292 OF 2024

Dnyanoba Bapurao Bandapalle

...Applicant
(Org. Defendant No.4)

Versus

1. Krishna Bapurao Bandapalle, ... (Org. Plaintiff)
2. Bapurao Hanmant Bandapalle,
3. Smt. Kalawatibai Bapurao Bandapalle,
4. Sarswatibai Bapurao Bandapalle,
5. Dnyanoba Govindrao Bandapalle. ... Respondents
(Org. Deft. Nos.1 to 3 & 5)

Adv. Tukaram Maruti Venjane for Applicant.

Adv. B. N. Patil for Respondent Nos.1 and 4.

CORAM : S. G. CHAPALGAONKAR, J.

DATED : 13th DECEMBER 2024.

PC.:-

1. Applicant seeks to condone the delay of 3688 days caused in filing second appeal against judgment and decree dated 8th January 2014, passed by learned District Judge-2, Latur, in Regular Civil Appeal No.111 of 2011, thereby reversing the judgment and decree dated 29th October 2009 passed by learned 7th Joint Civil Judge, Junior Division, Latur in Regular Civil Suit No.129 of 2008. [Hereinafter parties are referred as per original status in the suit for brevity and convenience].

2. Apparently, there is delay of 3688 days in filing second appeal. Applicant is original Defendant No.4 in Regular Civil Suit No.129 of 2008, which was instituted by Respondent No.1-Plaintiff seeking decree of partition and separate possession in respect of suit properties. The Trial Court was pleased to dismiss the suit of Plaintiff, whereas Appellate Court decreed suit thereby declaring that Plaintiff is entitled to 1/3rd share of suit property. The aggrieved Applicant filed Regular Civil Appeal No.111 of 2011 before learned District Judge-2, Latur which came to be dismissed vide judgment and order dated 8th January 2014. Hence present second appeal along with present application is filed in month of April 2024.

3. Applicant contends that he was not aware about the judgment and decree passed by learned District Court, his Advocate did not inform him. Respondent No.1 – Decree holder filed Regular Darkhast No.3/2021 in pursuance to decree passed by Appellate Court. On 5th January 2022, precept was sent for partition under Section 54 of the code to Collector, thereafter the Applicant-Defendant No.4 received Tahasildar's notice dated 6th February 2024 for partition and delivery of possession. Thereafter, Applicant took steps for filing the appeal.

4. It is further contention of Applicant that in fact, during pendency of appeal before District Court, settlement was arrived between the parties. It was reduced in writing on stamp paper before Notary on 20th September 2011. Consequently, Mutation Entry No.512 has been recorded. Respondent No.1 - Plaintiff was given alternate land and he was put into possession, therefore, Applicant did not instruct further to his Advocate engaged in appeal. The delay caused in filing second appeal is not intentional.

5. Per contra, it is contention of Respondent No.1- Plaintiff that Applicant was well aware about judgment and decree passed by Appellate Court. He was represented by an Advocate and after hearing submissions from the respective parties, regular civil appeal was disposed vide judgment and order dated 8th January 2014. Reasons given in application are illusory and does not constitute sufficient cause.

6. Having considered submission advanced by learned Advocates appearing for respective parties and upon perusal of the documents tendered into service it can be observed that Original Plaintiff had filed Regular Civil Appeal No.111 of 2011 before District Court. Applicant/Defendant No.4 was duly represented by his Advocate Mr. Chapolikar. Appeal was taken up for hearing in month of January 2014. Learned District Judge recorded submissions of learned

Advocates appearing for Plaintiff and Defendants. Learned District Judge observed in his order that Defendants failed to contest the suit, they had not given instructions to their Advocates. They have not challenged evidence of Plaintiff or even not adduced their own evidence on oath. Consequently, allowed the appeal of Plaintiff and granted 1/3rd share in suit property.

7. In light of aforesaid factual aspect, if reasons advanced for delay condonation are considered, Applicant has simply asserted that his Advocate had not communicated him about decision of District Court and in year 2024, on receipt of notice of execution i.e. after 10 years, he got the knowledge of decree of Appellate Court. Such explanation cannot be accepted as true and correct. It is always duty of litigant to remain in contact with his Advocate and get the status of proceedings. If he has failed to contact his Advocate for 10 years, he will have to blame himself.

8. Applicant further contends that there was compromise between him and Plaintiff and land to extent of 80 R was allotted to Plaintiff from Gat No.115. A notarised document dated 20th September 2011 and Mutation Entry No.512 is placed on record. Respondents have filed reply to the application and denied compromise and contended that delay caused is deliberate and intentional. Applicant is

deriving income from the land and making every attempt to protract the proceedings to deprive Respondents from the fruits of decree.

9. Pertinently, alleged compromise between the parties took place in year 2011 in form of notarised documents. If that was so, there is no reason why such compromise was not recorded in pending civil appeal between the parties. No explanation is given for that purpose, even the copy of such compromise was never placed before the Appellate Court. Appeal before District Court has been finally heard in year 2014. As such, even after recording the compromise, appeal was pending for about 28 months. It is, therefore, clear that story made out by Applicant is not reliable. The present application along with appeal appears to be one more attempt to protract execution of decree which reached to last stage.

10. As such, no good ground is made out to condone the inordinate delay of more than 10 years caused in filing second appeal. Hence, civil application stands dismissed.

(S. G. CHAPALGAONKAR, J.)