



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

**CIVIL APPLICATION NO. 9455 OF 2023
IN SAST/22523/2023**

DEELIP SO RAJARAM MALI

VERSUS

SUNIL PANDAV @ PANDURANG MALI (KSHIRSAGAR) AND ORS

....

Mr. M. L. Dharashive, Advocate for applicant

Mr. B. N. Patil, Advocate for respondent No.3

....

CORAM : Y. G. KHOBRAGADE, J.

DATE : 28 MARCH 2024

PER COURT :-

1. Heard Mr. Dharashive the learned Counsel for the applicant and Mr. Patil, the learned Counsel for non applicant No.3, at length. Non applicant Nos. 1 and 2 are remained absent, though served.

2. By the present application, the applicant/original plaintiff prays for condonation of delay of 1140 days caused while lodging the appeal against the judgment and decree dated 06.03.2020 passed by the learned first appellate Court, Latur in Regular Civil Appeal No.150 of 2018 arising out of the judgment

and decree dated 16.10.2018 passed by the learned Civil Judge, Junior Division, Ausa, District Latur in Regular Civil Suit No.527 of 2015.

3. On perusal of the application, it appears that on 06.03.2020, the learned first appellate Court passed the judgment and decree, however, on 09.06.2020 the appellant/plaintiff applied for certified copy, which he received on 13.07.2020. Thereafter on 17.07.2023, near about after lapse of three years from receipt of certified copy, the present appeal has been filed, for which 1140 days delay has been caused. The appellant set out the reason that due to Covid and poverty, he could not contact with his legal advisor, so also due to marriage ceremony of his relative, he could not file the appeal within time.

4. The non applicant No.3 has filed reply and strongly resisted the application mainly on the ground that the applicant failed to explain delay properly, hence, prayed for rejection of the application.

5. In support of this submissions the learned Counsel appearing for non applicant No.3 places reliance on the case of **P K**.

Ramachandran Vs. State of Kerala and another - AIR 1998 SC 2276, wherein it has been held that law of limitation may harshly affect a particular party but it has to be applied with all its rigour when the statute so prescribed and the Courts have no power to extend the period of limitation on equitable grounds.

6. In the case in hand, the applicant/plaintiff is from the economical weaker section and illiterate person. Further due to pandemic Covid-2019, all the establishments including the Court functions were suspended for more than one and half year. Therefore, if the period of Covid is excluded, then hardly near about one year period remains, which has not been explained by the applicant.

7. The applicant submitted that due to marriage ceremony of his close relative, he could not file appeal within limitation. Therefore, in view of above, I am satisfied that the applicant has bona-fidely explained the delay, which is liable to be condoned. However, at the same time, the non applicant No.3 / original defendant suffered for litigation due to delay on the part of the applicant. Therefore, appropriate cost can be compassionated.

8. In view of the above, I am inclined to grant the present application and proceed to pass the following order:

ORDER

- (i) The civil application is allowed, subject to payment of cost of Rs.5,000/- to be paid by the applicant to non-applicant No.3 on or before 18.04.2024.
- (ii) The applicant shall pay cost directly to non-applicant No.3 or he shall deposit the said amount with the Registry of this Court on or before 18.04.2024.
- (iii) After the compliance is made, the Registry shall register the appeal and place before this Court for further action.

[Y. G. KHOBRAGADE, J.]

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