



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CIVIL APPLICATION NO. 15506 OF 2023
IN SAST/36152/2023 WITH
CIVIL APPLICATION NO. 15508 OF 2023
IN SAST/36152/2023 WITH SAST/36152/2023

Dilip Khandu Kale

...Applicant

VERSUS

Deotabai W/o Ganpat Wanjare And Ors

....Respondent

Mr. Mayur Subhedar h/f Mr. C. V. Dharurkar,
Advocate for Applicant

...

CORAM : R.M. JOSHI, J
DATE : JANUARY 18, 2024

PER COURT :

1. This Appeal is filed under Section 100 of Code of Civil Procedure taking exception to the judgment and order dated 07.10.2022 passed in Civil M.A. No. 149/2018. Civil application came to be filed as there was delay caused in preferring First Appeal against judgment and decree dated 03.11.2009 passed in RCS No. 55/2005. Appellant/Original Defendant was seeking condonation of delay of 8 years and 7 months in preferring the said Appeal. Not only delay was caused in preferring first appel, however, present second

appeal is also sought to be filed after delay of 204 days.

2. Learned Counsel for the Appellant submits that Appellant has good case to make out on merits. According to him, First Appellate Court has committed error in not considering the case of the Appellant before it for condonation of delay.

3. This being Appeal under Section 100 of Code of Civil Procedure, it must involve substantial question of law. Even in order to issue notice to the other side for condonation of delay, Court has to satisfy itself at least *prima facie* that some substantial question of law is involved in this Appeal.

4. There is no dispute about the fact that though in RCS No. 55/2005 defendant/Appellant received notice but failed to appear before the trial Court. Suit came to be filed in the year 2005 and was decided in November, 2009 It is thus, clear that there was no haste on the part of the trial Court to decide the suit. In the circumstances, at the first instance it was necessary for the Appellant/original defendant to

make out a case before the First Appellate Court giving sufficient reason for their non appearance. Perusal of the Appeal memo before First Appellate Court whispers nothing about it. Even in the application filed for condonation of delay it is vaguely stated that on 09.02.2018 Appellant came to know about order. There is nothing mentioned as to how Appellants came to know about it. A mere creation of cause of action is not sufficient for condonation of delay. There must exist genuine cause of action and thereafter, it is permitted for the party to substantiate the sufficient reason for condonation thereof.

5. Here in this case, application as well as Appeal memo sought to be filed before the First Appellate Court gives absolutely no reason much less sufficient reason or justification for delay. There is nothing to indicate that for reasons beyond control of the Appellant, he could not appear before trial Court or was prevented from filing Appeal against judgment for period of 8 years. First Appellate Court, therefore, was perfectly justified in rejecting the application for condonation huge delay.

6. Having regard to the aforestated facts, no case is made out even for issuance of notice to other side. In the result, application for condonation of delay stands dismissed. Consequently, question of entertaining appeal does not arise. Pending applications are also disposed of.

(R. M. JOSHI, J.)

Malani