



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

CIVIL APPLICATION NO. 1530 OF 2017
IN
SECOND APPEAL (ST.) NO. 875 OF 2017

Motiram Babu Guram

... Applicant.

Versus

Yashwant Shankar Rawale

(since deceased) through his LRs and Ors.

... Respondents.

Mr. Sudhir Prabhu, Advocate for the Applicant.

Mr. A.B. Tajane, Advocate for the Respondent Nos.1A to 1C.

CORAM : SHARMILA U. DESHMUKH, J.

DATE : JANUARY 16, 2024

P. C.:

1. The Application has been preferred seeking condonation of delay of 81 days caused in filing the Second Appeal. The reason for the delay stated in the Application is that the Applicant is of an advanced age of 74 years and is not in a position to travel without escort. It is further stated that the Applicant was not familiar with any Advocate from Mumbai and in the second week of November, 2016 he meet the present Advocate, who advised him to obtain certified copy of the judgment and decree as well as certified copy

of the first appeal which were obtained by him on 24th November, 2016. It is pleaded that the Applicant is poor agriculturist and necessary finances had to be procured for filing of the Appeal. It is pleaded that thereafter, on 20th December, 2016, the Applicant met the present Advocate and gave instructions as regards filing of the Second Appeal, however, on 24th December, 2016, the Christmas vacation started and the Appeal could not be filed immediately.

2. Heard Mr. Prabhu, learned counsel for the Applicant and Mr. Tajane, learned counsel for the Respondent Nos.1A to 1C.

3. Mr. Prabhu, learned counsel for the Applicant submits that sufficient reason has been given in the application for condoning the delay. He submits that the age of Applicant cannot be disputed and it has been specifically stated that time was consumed in obtaining the certified copies subsequent to which the present Advocate was instructed to file the Second Appeal.

4. *Per contra*, learned counsel for the Respondent would submit that the reason given is not supported any document. He would submit that it is not demonstrated by any supporting

document that for the purpose of travel, the Applicant requires an escort. As regards the financial ability, he would submit that the Applicant is having three shops and also owns a four wheeler as such is financially well off. He would further submit that the reasons do not indicate that even after vacation the Appeal was filed and as such, there is no sufficient reason given in the Civil Application. He submits that in the reply reliance has been placed upon the various decision of the Apex Court as well as the other High Courts which lays down the proposition of law that in the absence of any satisfactory explanation, delay cannot be condoned.

5. Considered the submissions and perused the record.

6. The impugned judgment and decree was passed on 20th July, 2016 and the Application for certified copy was made on 6th August, 2016 and was received on 10th August, 2016. It is contended that after the judgment was passed the concerned Advocate who had appeared before the 1st Appellate Court advised the Applicant to file the Second Appeal and as the Applicant was not knowing any Advocate practicing in Mumbai, no instructions

could be given immediately to file Second Appeal. It is further contended that in the second week of November, he met the present Advocate however, time was spent in obtaining the certified copies as well as for procuring of finances and as such, immediate steps could not be taken for filing the Appeal. It is also stated that the present Advocate was engaged on 20th December, 2016 and due to the Christmas Vacation, the Appeal was not filed immediately. It appears that on 10th January, 2017, Civil Application as well as Second Appeal has been filed. It is settled that each and every day of delay is not required to be explained and the delay can be condoned, if there is sufficient explanation tendered by the Applicant for the delay. The delay of 81 days cannot be said to be such a collussal delay so as not to be condoned, considering the explanation which has been given.

7. The provisions of Section 5 of the Limitation Act can well be applied in the present case to condone the delay, considering that the Applicant is an agriculturist and it cannot be doubted that time was spent in engaging an advocate for the purpose of challenging the order of the 1st Appellate Court before this Court.

8. In that view of the matter, Civil Application stands allowed. The delay of 81 days caused in filing the Civil Application is condoned.

(Sharmila U. Deshmukh, J.)