



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

CIVIL APPLICATION (S) NO. 610 OF 2023
IN SECOND APPEAL ST. NO. 7954 OF 2023

(Sanjaybaba s/o Dattatray Pandit, through Power of Attorney Mrs. Savita Arvind Desai and
Mr. Arvind Shantaram Desai Vs. Gulabrao Vishwanath Selokar)

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

Court's or Judge's orders.

Shri K.R. Lule, Counsel for the applicant/appellant.
Shri C.A. Bhagwani, Counsel for the non-applicant/
respondent.

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CORAM : ANIL L. PANSARE, J.
FEBRUARY 5, 2024.

By the present application, the applicant is seeking to condone delay of 311 days in filing Second Appeal against the judgment and decree dated 21/6/2021 passed by District Judge – 4, Nagpur in Regular Civil Appeal No. 840/2012 by which the Appellate Court reversed the judgment and decree dated 13/4/2012 passed by Civil Judge Junior Division, Parshioni in Regular Civil Suit No. 38/2011.

2] The respondent/plaintiff had filed suit to declare him as owner by adverse possession over the agricultural land. The First Appellate Court has taken cognizance of the revenue entry in 7/12 extract which indicated that the respondent/plaintiff is in possession of the suit land from the year 1988-89. This mutation entry has been not challenged by the appellant/defendant and his power of attorney. The First Appellate Court, considering the law laid down in the case of i) *Krishnamurthy S. Setlur (dead) by Legal Representatives*

Vs. O.V. Narasimha Setty (dead) by Legal Representatives [2010(1) Civil Law Journal 17]; ii) Maddisetti Venkata Rathnamma (dead) by LRs Vs. Pasupuleti Radhakrishna Murthy and another [2002(1) Civil Law Journal 107]; and iii) Kshitish Chandra Bose Vs. Commissioner of Ranchi [AIR 1981 SC 707] to hold that the plaintiff has established his ownership by adverse possession.

3] Be that as it may, so far as condonation of delay is concerned, the judgment and decree has been passed on 21/6/2021. In the additional affidavit filed by the applicant, he has stated that he has applied for certified copies of record of the First Appellate Court and also the trial Court on 25/7/2022. He received certified copies on 12/8/2022 and 30/9/2022 respectively. The appeal has been filed on 5/4/2023.

4] There is absolutely no justification as to why the appeal was not filed immediately after 30/9/2022. The learned Counsel for the applicant submits that the applicant is residing in America and, therefore, instructions could not be obtained. This reason is sans merit inasmuch as the application has been filed through power of attorney. There is nothing in the application as to what prevented the power of attorney to approach the Court in time, if ultimately the appeal was to be filed through power of attorney.

5] The learned Counsel for the applicant submits that liberal approach be taken.

6] While it is well settled that such applications will be considered with liberal approach,

complete absence of justification for delay can never be ignored. The Hon'ble Supreme Court in the case of *Ramlal Vs. Rewa Coalfields Ltd. [AIR 1962 SC 361]* has held as under :

“In construing Section 5 (of the Limitation Act), it is relevant to bear in mind two important considerations. The first consideration is that the expiration of the period of limitation prescribed for making an appeal gives rise to a right in favour of the decree-holder to treat the decree as binding between the parties. In other words, when the period of limitation prescribed has expired, the decree-holder has obtained a benefit under the law of limitation to treat the decree as beyond challenge, and this legal right which has accrued to the decree-holder by lapse of time should not be light-heartedly disturbed. The other consideration which cannot be ignored is that if sufficient cause for excusing delay is shown, discretion is given to the court to condone delay and admit the appeal. This discretion has been deliberately conferred on the court in order that judicial power and discretion in that behalf should be exercised to advance substantial justice.”

7] The Supreme Court in the case of *Basawaraj and anr. Vs. The Spl. Land Acquisition Officer [AIR 2014 SC 746]*, in paragraph 15, has held as under :

“15. The law on the issue can be summarised to the effect that where a case has been presented in the court beyond limitation, the

applicant has to explain the court as to what was the “sufficient casue” which means an adequate and enough reason which prevented him to approach the court within limitation. In case a party is found to be negligent, or for want of bona fide on his part in the facts and circumstances of the case, or found to have not acted diligently or remained inactive, there cannot be a justified ground to condone the delay. No court could be justified in condoning such an inordinate delay by imposing any condition whatsoever. The application is to be decided only within the parameters laid down by this court in regard to the condonation of delay. In case there was no sufficient cause to prevent a litigant to approach the court on time condoning the delay without any justification, putting any condition whatsoever, amounts to passing an order in violation of the statutory provisions and it tantamounts to showing utter disregard to the legislature.”

8] Considering the law laid down in the aforesaid two judgments, there appears no substance in the application. The same is accordingly rejected.

(ANIL L. PANSARE, J.)

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