



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

CIVIL APPLICATION (CAS) NO. 164 OF 2017
IN
SECOND APPEAL (ST.) NO. 17097 OF 2016

SHEWANTI WD/O. GANESH HEPAT (DEAD) THR. LRS SMT. MEERABAI W/O. MADHUKAR DAMBALE AND ORS.

–Vs. –

CHINTAMAN S/O. BHAGWAN UMALE (DEAD) THR. LRS. AND ORS.

Office Notes, Office Memoranda of
Coram, appearances, Court's Orders
or directions and Registrar's order

Court's or Judge's Order

Shri Harshad H. Jichkar, Advocate h/f. Shri A.A.Sambaray, Advocate for
appellants.

Shri D.C. Chahande, Advocate respondent no. 1(B).

CORAM : SANJAY A. DESHMUKH, J.

DATED : 07/08/2024

1. The son of deceased respondent no. 1 – Chintaman i.e. Sudhakar Chintaman Umale, respondent no. 1(B) is present in the Court. On enquiry with respondent no. 1(B) - Sudhakar Chintaman Umale, he submits that Satyafula, respondent no. 3(A) is dead and Bhojraj, respondent no. 1(D) is also dead.

2. He further submits that, he and his brothers etc. do not want to engage any Advocate and whatever may be the decision of this Court, they are ready to accept it. The learned Advocate Shri D.C. Chahande for respondent no. 1(B) submits that he be discharged. The learned Advocate Shri D.C. Chahande discharged.

3. The learned Advocate for the appellants submits that Satyafula, respondent no. 3(A) is dead, however, it is not necessary to bring her legal heirs on record because her legal heir Dhanraj, Chandrabhan and Deorao are already on record.

4. The **Civil Application No. 164 of 2017** is for condonation of delay of 7 years, 3 months and 10 days (2660 days) caused for preferring the Second Appeal.

5. The learned Advocate for the appellants pointed out that the applicants/appellants are not having knowledge of the law and it is the reason for condonation of delay.

6. Perused the application.

7. Heard learned Advocate for the appellants.

8. The respondents are absent though duly served.

9. It would be proper to rely upon the following authorities/cases:-

a) ***Vedabai alias Vijayantabai Baburao Patil ..V/s.. Shantaram Baburao Patil and others***, reported in (2001) 9 SCC 106.

b) ***Collector, Land Acquisition, Anantnag and anr. V/s. Mst. Katiji and ors.***, reported in AIR 1987 SC 1353.

10. In ***Vedabai alias Vijayantabai Baburao Patil*** (supra), the Hon'ble Apex Court held as under:-

“In exercising discretion under [Section 5](#) of the Limitation Act the Courts should adopt a pragmatic approach. A distinction must be made between a case where the delay is inordinate and a case where the delay is of a few days. Whereas in the former case the consideration of prejudice to the other side will be a relevant factor so the case calls for a more cautious approach but in the latter case no such consideration may arise and such a case deserves a liberal approach. No hard and fast rule can be laid down in this regard. The Court has to exercise the discretion on the facts of each case keeping in mind that in construing the expression “sufficient cause”, the principle of advancing substantial justice is of prime importance.”

11. Further in ***Collector, Land Acquisition, Anantnag and anr.*** (supra), the Hon’ble Apex Court held as under:-

“3. The legislature has conferred the power to condone delay by enacting [Section 51](#) of the Indian Limitation Act of 1963 in order to enable the Courts to do substantial justice to parties by disposing of matters on 'merits'. The expression "sufficient cause" employed by the legislature is adequately elastic to enable the courts to apply the law in a meaningful manner which subserves the ends of justice that being the life-purpose for the existence of the institution of Courts. It is common knowledge that this Court has been making a justifiably liberal approach in matters instituted in this Court. But the message does not appear to have percolated down to all the other Courts in the hierarchy. And such a liberal approach is adopted on principle as it is realized that:-

- 1. Ordinarily a litigant does not stand to benefit by lodging an appeal late.*
- 2. Refusing to condone delay can result in a meritorious matter being thrown out at the very*

threshold and cause of justice being defeated. As against this when delay is condoned the highest that can happen is that a cause would be decided on merits after hearing the parties.

3. "Every day's delay must be explained" does not mean that a pedantic approach should be made. Why not every hour's delay, every second's delay? The doctrine must be applied in a rational common sense pragmatic manner.

4. When substantial justice and technical considerations are pitted against each other, cause of substantial justice deserves to be preferred for the other side cannot claim to have vested right in injustice being done because of a non-deliberate delay.

5. There is no presumption that delay is occasioned deliberately, or on account of culpable negligence, or on account of malafides. A litigant does not stand to benefit by resorting to delay. In fact he runs a serious risk.

6. It must be grasped that judiciary is respected not on account of its power to legalize injustice on technical grounds but because it is capable of removing injustice and is expected to do so.

Making a justice-oriented approach from this perspective, there was sufficient cause for condoning the delay in the institution of the appeal. The fact that it was the 'State' which was seeking condonation and not a private party was altogether irrelevant. The doctrine of equality before law demands that all litigants, including the State as a litigant, are accorded the same treatment and the law is administered in an even handed manner. There is no warrant for according a stepmotherly treatment when the 'State' is the applicant praying for condonation of delay. In fact

experience shows that on account of an impersonal machinery (no one in charge of the matter is directly hit or hurt by the judgment sought to be subjected to appeal) and the inherited bureaucratic methodology imbued with the note-making, file pushing, and passing-on-the-buck ethos, delay on its part is less difficult to understand though more difficult to approve. In any event, the State which represents the collective cause of the community, does not deserve a litigant-non-grata status. The Courts therefore have to be informed with the spirit and philosophy of the provision in the course of the interpretation of the expression "sufficient cause". So also the same approach has to be evidenced in its application to matters at hand with the end in view to do even handed justice on merits in preference to the approach which scuttles a decision on merits."

12. In view of the ratio laid down in above authorities and considering the fact that the applicants are from rural area and having no knowledge of law as well as delay is also not caused deliberately, so also this litigation has been started in the year 1994, the *lis* between parties must be decided on merit. The *lis* must end on merit to do substantial justice. Thus, there is sufficient cause to condone delay of 7 years, 3 months and 10 days as stated in the application. The application deserves to be allowed in the interest of justice. As such, the application is **allowed** and delay in filing Second Appeal is **condoned**.

13. Registry is directed to register the appeal.

14. The application stands **disposed of**.

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Issue notice to the respondents.

2. Call R & P.
3. The learned Advocate for the appellants seeks leave to serve the notice to the respondents by RPAD.
4. In addition to regular mode of service, the permission is granted to the appellants advocate to serve the notice to the respondents by RPAD.
5. Stand over to 26/08/2024.

(SANJAY A. DESHMUKH, J.)

B.T. Khapekar