

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CIVIL APPLICATION NO. 4329 OF 2023
IN SAST/9875/2023

Baban Yadav Gite

VERSUS

Kisan Vitthal Gite

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Advocate for Applicant : Mr. Wagh Umakant U.

Advocate for Respondent Nos.1 & 2 : Mr. Kakde Yuvraj Vijayrao

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CORAM : S.G. CHAPALGAONKAR, J.

DATED : APRIL 30, 2025

ORDER :

1. The applicant seeks to condone delay of 1981 days causing in filing second appeal against judgment and order dated 19.06.2017 passed by District Judge, Ahmednagar in Regular Civil Appeal No.264 of 2006.

2. Mr. Wagh, learned advocate appearing for applicant vehemently submits that the applicant had engaged Advocate Shri S.B. Gaikwad to conduct Regular Civil Appeal No.264 of 2006. During pendency of appeal, applicant was in touch with him. Unfortunately, Mr. Gaikwad expired on 02.10.2021. On 29.07.2022, the son of Mr. Gaikwad communicated applicant about disposal of appeal. Thereafter, applicant took steps for obtaining certified copies and approached this Court in this second appeal. According to Mr. Wagh, delay caused in filing appeal is unintentional. Applicant is

litigating as to right over immovable property. Therefore, he urges to condone the delay.

3. Per contra, Mr. Kakde, learned advocate appearing for respondents vehemently submits that application sans adequate reasons to condone inordinate delay. He submits that applicant instituted suit for partition and separate possession. It was dismissed on 05.04.2006. Thereafter, Regular Civil Appeal No.264 of 2006 was filed before District Judge, Ahmednagar and same has been dismissed on 19.06.2017 after hearing parties. He would therefore submit that death of Mr. Gaikwad in the year 2021 is absolutely irrelevant to make out any ground for condonation of delay. He submits that Mr. Gaikwad was in practice for four years after passing judgment and decree dated 19.06.2017. The applicant has not offered any reason for such delay. He would therefore urge to reject the application.

4. The law in the matter of condonation of delay is fairly settled. Section 3 of Limitation Act debars the Court from entertaining any proceeding which is barred by limitation subject to exceptions carved out in Section 5. The Courts are empowered to condone the delay in case sufficient cause is made out. It is true that expression “sufficient cause” is given liberal interpretation to ensure substantial justice. However, no latitude can be given if negligence, inaction or lack of bonafides are discernible in the facts of particular case. In

case of ***Basawaraj and Another Vs. Special Land Acquisition Officer***¹, the Hon'ble Supreme Court observed in para 12 as under :

“12. It is a settled legal proposition that law of limitation may harshly affect a particular party but it has to be applied with all its rigour when the statute so prescribes. The Court has no power to extend the period of limitation on equitable grounds. “A result flowing from a statutory provision is never an evil. A Court has no power to ignore that provision to relieve what it considers a distress resulting from its operation.” The statutory provision may cause hardship or inconvenience to a particular party but the Court has no choice but to enforce it giving full effect to the same. The legal maxim “dura lex sed lex” which means “the law is hard but it is the law”, stands attracted in such a situation. It has consistently been held that, “inconvenience is not” a decisive factor to be considered while interpreting a statute. “

5. Recently, in case of ***H. Anjannapa and Ors Vs. A. Prabhakar and Ors***, the Hon'ble Supreme Court observed that burden is on the applicant to justify the delay and demonstrate sufficient cause for not approaching the Court within prescribed time. In light of aforesaid exposition of law, if we look to reasons as interpreted in the application, a bare statement is pressed into service that the learned advocate representing the applicant has not communicated the decision. It is difficult to countenance such vague statement. Litigant is required to be vigilant. It was duty of applicant to keep watch on proceeding instituted by him before District Court. It is

unconceivable that the decision rendered in the year 2017 came to the knowledge of applicant in the year 2022. Apparently, appellant is trying to prosecute stale claim. No sufficient cause is made out to condone inordinate delay.

6. In light of aforesaid discussions, there is no merit in the application. Hence, application stands rejected.

(S.G. CHAPALGAONKAR, J.)