



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

**CIVIL APPLICATION NO.486 OF 2008
IN
CIVIL APPLICATION NO.3082 OF 2025
IN
SECOND APPEAL ST. NO.17929 OF 2007**

**MANOHAR S/O NARSU MUSLE,
DIED THROUGH HIS LR.S.
VERSUS
VIJAYKUMAR S/O SHAMRAO MUSLE AND ANOTHER**

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Mr. M. U. Shelke, Advocate for Applicants.

Mr. V. V. Ingale, Advocate for Respondent Nos.1A to 1E.

Respondent Nos.3B is served.

Mr. C. R. More, Advocate for Respondent Nos.3C to 3E.

Respondent No.2 is dismissed.

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**CORAM : S. G. CHAPALGAONKAR, J.
DATED : 19th MARCH, 2025.**

ORDER:-

1. By this application, applicants seek to condone delay of 2708 days caused in filing Second Appeal challenging decree dated 27.01.2000 passed by learned District Judge, Osmanabad in Regular Civil Appeal No.131/1992, thereby upholding judgment and decree dated 31.03.1992 passed by Civil Judge Junior Division, Tuljapur in Regular Civil Suit No.244/1986.

2. The applicants are legal representatives of Manohar Narsu Musle, who was defendant no.1 in Regular Civil Suit No.244/1986 instituted by respondent nos.1 and 2. The suit was instituted seeking decree for partition and separate possession. Late

Manohar contested suit by filing his written statement. Although he admitted that suit properties are ancestral and *inter se* relationship, he contended that land Survey No.101 was allotted to him in previous partition between defendant nos.1 to 4.

3. The Trial Court decreed suit holding that plaintiffs are having 10 anna and 8 pai share in the suit land bearing Gut No.152. The defendant-Manohar filed Regular Civil Appeal No.131/1992, which came to be dismissed upholding decree passed by Trial Court vide judgment and decree dated 27.01.2000.

4. The present application alongwith Second Appeal is filed by legal representatives of defendant-Manohar, who expired on 22.11.2006. Although late Manohar was alive for about 6 years and 10 months post decree, he did not prefer Appeal during his lifetime. It is contention of applicants/LRs of Manohar that after receipt of execution notice, they came to know about decree.

5. Mr. Shelke, learned Advocate appearing for the applicants vehemently submits that defendant-Manohar was old age person. He was suffering from hyper tension alongwith Chronic Renal Failure C Senility. The doctor certified that he was under treatment from January 2002 to 2006 till this death. As such, he could not file appeal within time. The applicants being legal representatives got knowledge of decree after receipt of execution

notice and filed present Appeal. He contends that Courts are required to adopt liberal and justice oriented approach in the matter of delay condonation and unless delay is intentional, it should be condoned. If any prejudice is caused to other side, same can be compensated by imposing costs. In support of his contentions he relies upon following judgments:

1. *Collector, Land Acquisition Vs. Katiji and Others*¹.
2. *Rama Ravalu Gavade Vs. Sataba Gavade and another*².
3. *N. Balkrishnan Vs. M. Krishnamurthy*³.
4. *Improvement Trust Ludhiana Vs. Ujagar Singh and others*⁴.
5. *State of Tamil Nadu Vs. Anbai Kingston Philips and others*⁵.
6. *Sanjay Sadashiv Jadhav Vs. Joint Director and others*⁶.
7. *Shridevi Datla Vs. Union of India and others*⁷.
8. *Jaybhavana Matsyavyavsay Sahakari Sanstha Vs. Commissioner of fisheries and others (Writ Petition No.7210 of 2019 decided on 20.12.2021).*

6. Per contra, Mr. Ingale, learned Advocate appearing for respondents submits that present Appeal is filed only with intention to prolong execution of decree. He submits that false reasons are mentioned in application. The deceased-Manohar did

1 (1987) 2 SCC 107.
 2 (1997) 1 SCC 261.
 3 (1998) 7 SCC 123.
 4 (2010) 6 SCC 786.
 5 (2015) 15 SCC 208.
 6 2016 (2) Mh.L.J. 126.
 7 (2021) 5 SCC 321.

not file Appeal against impugned decree and accepted the same. The respondents/plaintiffs are litigating since 1992 to get fruits of decree. He points out that present application is also kept pending for years together, thereby halting execution of decree.

7. Having considered submissions advanced, only issue that arises for consideration is as to whether applicants have adequately explained huge delay of 2708 days caused in filing Second Appeal. Undisputedly, impugned judgment and decree is passed by Appellate Court dismissing Appeal filed by late Manohar Musle in the year 2000. Manohar expired in the month of November 2006. For all those six years, he did not find it necessary to challenge impugned decree. The medical certificate annexed alongwith application shows that late Manohar was suffering from hyper tension since 2002 onwards. Even assuming correctness of such certificate, there is no explanation for not filing appeal till January 2002. The illness shown in certificate is not serious, but of general nature. The particulars of admission, discharge or treatment advanced are not stipulated in application nor medical certificate explains the same. It is not discernible from pleading and material on record that Manohar was physically or mentally prevented from filing appeal during his lifetime. The applicant nos.2, 3 and 4 are stated to be sons of deceased and well settled in life. Their occupation is said to be agriculture and service. It

cannot be believed that they were not aware about litigation fought by their father. The conduct of late Manohar shows that he accepted decree.

8. Although Mr. Shelke relied upon bundle of judgments on the point of delay condonation and law espoused therein cannot be disputed, the fact remains that delay condonation application has to be decided on parameters laid down for condoning delay, which require that sufficient cause be established. In case of inordinate delay, negligence, or failure of due diligence, a right or remedy ceases to exist if not availed for a long time.

9. In case of ***Basawaraj and Anr. Vs. Special Land Acquisition Officer***⁸, Supreme Court observed in paragraph no.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.”

8 (2012) 14 SCC 81.

10. In that view of the matter, there is no merit in application.
Hence, Civil Application stands rejected.

(S. G. CHAPALGAONKAR)
JUDGE

Devendra/March-2025