

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

SECOND APPEAL NO.147 OF 2009
WITH CA/3313/2009 WITH CA/11162/2010

Krishna Chindha Gharte,
Age: 48 Years, Occu: Service,
R/o: Samode, Taluka Sakri,
District Dhule.

..Appellant

VERSUS

1. Ishwar Krishna Gharte,
Age: 22 Years, Occu: Student,
2. Miss. Manisha @ Madhuri D/o. Krishna Gharte,
Age: 21 Years, Occu: Student,

Both R/o. C/o. Gangadhar Eknath Kshirsagar,
Behind J.M. Tailor, Shramik Nagar,
Nampur Road, Satana,
Taluka Satana, District Nashik.
3. Smt. Banubai Chindha Gharte,
Aga: 78 Years, Occu: Agriculture,
4. Bhatu Chindha Gharte,
Age: 53 Years, Occu: Agriculture,
Nos. 3 and 4 R/o: Samode,
Taluka Sakri, District Dhule.
5. Waman Chindha Gharte,
Age: 45 Years, Occu: Service,
R/o: Pratap College, Amalner,
Taluka Amalner, Dist. Jalgaon.
6. Balasaheb Chindha Gharte,
Age: 38 Years, Occu: Service,
R/o: Uttamrao Patil Mahavidyalaya,
Dahiwel, Taluka Sakri,
District: Dhule.
7. Yamunabai Yashwant Pawar,
Age: 57 Years, Occu: Agriculture,
R/o: Sompur, Taluka Satana,
District: Nashik.
8. Sau. Shakuntala Shekhar Gavande (Dismissed)

(2)

9. Sau. Ranjana Yuvraj Nandan,
Age: 38 Years, Occu: Household,
R/o: Taharabad, Taluka Satana,
District Nashik.

10. Sau. Vijaya @ Bharti Vasant Patil,
Age: 37 Years, Occu: Household,
R/o: Pimpalner, Taluka Sakri,
District Dhule.

..Respondents

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Mrs. R.S. Kulkarni, Advocate for Appellant.

Mrs. C.S. Deshmukh, Advocate for Respondent Nos.1 & 2.

Mr. A.S. Sawant, Advocate for Respondent Nos.3, 6, 7 & 9.

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CORAM : S.G. CHAPALGAONKAR, J.

DATED : MAY 07, 2025

JUDGMENT :

1. The appellant impugns judgment and order dated 16.06.2008 passed by District Judge-II, Dhule in Misc. Civil Application No.96 of 2007, by which prayer to condone delay of 112 days caused in filing regular civil appeal against judgment and decree dated 30.07.2007 passed by Joint Civil Judge, Junior Division, Sakri has been declined.

2. The appellant is original defendant no.1 in Regular Civil Suit No.48 of 2001 that has been instituted by respondent no.1 seeking decree of partition and separate possession. Regular Civil Suit No.48 of 2001 has been decreed vide judgment and order dated 30.07.2007 and plaintiffs are granted 1/3rd share each in suit properties. The appellant/defendant, being aggrieved by the decree passed by the Trial Court, filed appeal before the District Judge at Dhule along with Misc. Civil Application No.96 of 2007 to condone

delay of 112 days. The appellant explained reason for delay in para 4 of application which states that in the month of September 2007, there was proposal for settlement and talk was going on. However, two days before proposal for settlement was rejected by plaintiffs.

3. The plaintiffs/respondents refuted the contents of para 4 and denied contention as to proposal for compromise or discussion by the parties. In this scenario, the learned District Judge rejected Misc. Civil Application No.96 of 2007 vide impugned order dated 16.06.2008.

4. Aggrieved by the order dated 16.06.2008, appellant filed this second appeal, which has been admitted on 27.02.2009 on following substantial questions of law :

“i. Whether the First Appellate Court committed any illegality or impropriety in not condoning delay of 112 days in filing Regular Civil Appeal?

ii. Whether the Trial Court committed error in holding that marriage of Krishna with Ashabai is void and as such Ashabai and her children are not necessary parties to the litigation?”

5. The learned advocates appearing for respective parties advanced their submissions on aforesaid substantial questions of law. Since the present appeal takes exception to order refusing to condone delay of 112 days, learned advocates concentrated submissions only on first substantial question of law and agreed that second substantial

question of law need not be delved into, as it relates to merit of judgment delivered by Trial Court.

6. Mrs. R.S. Kulkarni, learned advocate appearing for appellant submits that parties are litigating over rights in respect of immovable properties. The suit is filed for decree of partition and separate possession. In such case, decision on merit would bring end to litigation and parties can act upon crystallized rights through judicial pronouncements. She would submit that the word 'sufficient cause' employed under Section 5 of Limitation Act has to be construed liberally and the lis cannot be thrown without looking to merit by employing technical interpretation of term "sufficient cause". According to her, Section 5 gave wide discretion to Courts to entertain lis after expiry of prescribed limitation period and such discretion has to be exercised in judicious manner. In support of her contention, she relies upon the law laid down by the Hon'ble Supreme Court in case of *Collector Land Acquisition, Anantnag Vs. Mst. Katiji and Ors*¹.

7. Per contra, Mrs. C.S. Deshmukh, learned advocate appearing for respondent nos.1 and 2 supports the impugned order. She would urge that to make out sufficient cause to support condonation of delay, atleast plausible explanation needs to be given. In present case, vague and casual plea is employed stating that there was compromise proposal and it was being discussed between the

¹ 1987 (2) SCC 107

parties. The aforesaid contention is specifically denied by respondents/plaintiffs. Despite such denial, plaintiffs failed to lead any evidence depicting particulars of proposal, nature of discussion, participants in discussion etc. In this background, the learned District Judge has rightly refused to condone delay. As such, no interference is called in the impugned order.

8. In light of aforesaid submissions, it is essential to refer certain observations of Hon'ble Supreme Court in case of Collector Land Acquisition, Anantnag (supra), which read thus :

“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 in-justice 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 mala fides. 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."*

9. Applying the aforesaid exposition of law in facts of present case, it can be noted that appellant took a plea that there were compromise talks and on refusal of proposal, he filed appeal along with application for condonation of delay. True that respondents have denied such contentions, but none of the party entered into witness box. The assertions in the application are denied by making assertions in reply. There is nothing on record to show that appellant derived any advantage by making delay or it was deliberate or intentional. Looking to the length of delay i.e. 112 days, appellant cannot be branded as lethargic or negligent person. The reasons as given in the application are plausible, particularly when it comes to suit for partition, parties to the litigation are blood relatives,

the possibility that before litigating further they would try to amicably settle the dispute, cannot be denied. Therefore, there is no reason to outright reject explanation tendered by appellant.

10. In the aforesaid circumstances, when parties are litigating to establish their right over immovable property, the Courts are bound to adopt liberal approach in the matter of delay condonation. However, when delay is not meticulously explained, inconvenience suffered by other side can be compensated by directing payment of certain cost. However in such cases, the lis cannot be terminated without delving into merits of the case.

11. In that view of matter, this Court hold that the learned District Judge committed illegality and impropriety while declining to condone delay of 112 days caused in filing appeal and answer substantial question of law accordingly.

12. In result, second appeal is allowed. The impugned order dated 16.06.2008 passed by learned District Judge-II, Dhule in Misc. Civil Application No.96 of 2007 is quashed and set aside.

13. Misc. Civil Application No.96 of 2007 is allowed. Delay of 112 days caused in filing appeal is condoned. Appeal be registered and taken up for disposal on merit in accordance with law.

14. Parties to appear before learned District Judge at Dhule on 23.06.2025.

15. Pending civil applications stand disposed of.

(S.G. CHAPALGAONKAR, J.)