



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD
CIVIL APPLICATION NO.10518 OF 2024
IN
APPEAL FROM ORDER (STAMP) NO.18672 OF 2024**

VARCO BUILDCON THROUGH ITS PARTNER VIKRAMSING
ARJUNSINH DALWALA AND ANR
VERSUS
LAXMIBAI PARLHADRAO NAND AND OTHERS

...

Mr. S. S. Gangakhedkar h/f Mr. V. B. Gite, Advocate for Applicants.

Mr. P. K. Lakhotiya, Advocate for Respondent No.1.

Respondent Nos.2 to 6 are served.

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**CORAM : S. G. CHAPALGAONKAR, J.
DATED : 01st APRIL, 2025.**

ORDER:-

1. The applicants seek to condone delay of 339 days caused in filing Appeal against Order dated 04.05.2023 passed below Exhibit-5 in Special Civil Suit No.427/2022 by Civil Judge Senior Division at Jalna.

2. Mr. Gangakhedkar, learned Advocate appearing for applicants by inviting attention of this Court to the contentions in application submits that, as advised to applicants, papers were handed over to an Advocate at Jalna for filing an Appeal before District Court against impugned order. They were given impression that Appeal is already filed. However, later on it was informed that Appeal would not lie before District Court and applicants need to file Appeal before this Court. Thereafter, applicants approached to Advocate at Aurangabad and handed over

papers to him. Unfortunately, said Advocate expired. The applicants after receiving papers back, re-arranged for filing Appeal through present Advocate and filed Appeal. In this process delay is caused in filing Appeal, which is not intentional. The applicants have not derived any advantage by making delay, particularly when they suffered order of injunction. Mr. Gangakhedkar in support of his contentions relies upon following judgments:

1. ***Sonerao Sadashivrao Patil and another Vs. Godawaribai Laxmansingh Gahirewar and others*¹.**
2. ***Maniben Devraj Shah Vs. Municipal Corporation Brihan Mumbai*².**
3. ***Sheo Raj Singh and Ors. Vs. Union Of India and another*³.**

3. Per contra, Mr. Lakhotiya, learned Advocate appearing for respondent no.1 vehemently opposes application. By inviting attention of this Court to the contentions in affidavit-in-reply, he submits that applicants failed to make out sufficient cause to explain inordinate delay caused in filing Appeal. He points out that application sans requisite details or verifiable material to find out veracity of contentions. According to him, applicants have intentionally suppressed material facts or made out fictitious grounds without disclosing material particulars. He submits that

¹ AIR 1999 BOMBAY 235.

² (2012) 5 SCC 157.

³ (2023) 10 SCC 531.

applicant being partnership firm dealing in business and aware about legal proceedings. The reasons as stated in application are patently false. As such, application deserves to be rejected with costs. In support of his contentions he relies upon following judgments:

1. ***Sheo Raj Singh and Ors. Vs. Union Of India and another***⁴.
2. ***Bhaskar Laxman Jadhav and Ors. Vs. Karamveer Kakasaheb Wagh Education Society and others***⁵.
3. ***Nitin Mahadeo Jawale and Others Vs. Bhaskar Mahadeo Mutke***⁶.
4. ***Ramjas Foundation and Another Vs. Union of India and Others***⁷.

4. Having considered submissions advanced, it can be observed that impugned order was passed just before summer vacation. According to applicants, after receiving certified copies, they instructed Advocate at Jalna to file Appeal and accordingly applicants were given to understand that such Appeal is already filed. Later on, they were given to understand that District Judge, Jalna has no jurisdiction and, therefore, Appeal is returned. According to applicants, they were mislead by concerned Advocate and came to know that Appeal was never presented to District Court. It is true that applicants have not given name of Advocate to whom they had instructed to file Appeal or who mislead them.

⁴ (2023) 10 SCC 531.

⁵ AIR 2013 SC 523.

⁶ 2024 SCC OnLine SC 3468.

⁷ (2010) 14 SCC 38.

Mr. Gangakhedkar, learned Advocate appearing for the applicants submits that non-disclosure of name is in the interest of Advocate and applicants were not intending to make issue of his default. Secondly, it is stated in application that when papers were handed over to Advocate at Aurangabad, he expired. The name of Advocate is not disclosed in application, but during course of argument Mr. Gangakhedkar discloses the name and submits that the date of death of Advocate is mentioned in application, who expired while working in the Court premises. As such, he submits that although name is not disclosed, from aforesaid particulars, name can be gathered. He would, therefore, submit that non-disclosure of name of Advocates is not intentional. The explanation tendered is plausible.

5. Mr. Lakhotiya, learned Advocate relying upon judgment of ***Bhaskar Laxman Jadhav and Ors.*** (supra) submits that suppression of material information or non-disclosure of material facts is intentional. This Court is of view that from aforesaid explanation tendered on behalf of applicants, inference of intentional suppression cannot be drawn. Even in case of ***Sheo Raj Singh and Ors.*** (supra), Supreme Court of India observed that sufficiency of cause and degree of acceptability of explanation are parameters for condoning delay. It is true that, one can said to have explained delay when all relevant facts leading to delay are

mentioned and with such explanation it can be demonstrated that delay occurred is not for the fault of applicants. In present case, circumstances pleaded in application are plausible. If applicants were mislead on the point of jurisdiction of Court or later on Advocate engaged for filing Appeal has expired, cause shown must be interpreted as sufficient. At this stage reference can be given to observations of Supreme Court of India in case of ***Collector, Land Acquisition, Anantnag & Anr. Vs. Katiji & Ors.***⁸, which reads thus:

“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.”

6. The aforesaid parameters of law in the matter of condonation of delay still holds field and judgment relied and cited by both sides still do not supersede or overrule basic law in the matter of delay condonation. In that view of the matter, I do not find any reason to foreclose right of applicants to file Appeal against impugned order on technical reasons. However, delay occasioned must have caused inconvenience to contesting respondent no.1, who needs to be adequately compensated. Hence, following order:

ORDER

a. Civil Application is allowed.

⁸ (1987) 2 SCC 107.

b. Delay of 339 days caused in filing Appeal against Order is condoned subject to condition that applicants pay cost of Rs.5000/- to respondent no.1 within a period of three weeks from today.

c. Once cost is deposited, Appeal against Order be registered and post for further hearing after four weeks.

(S. G. CHAPALGAONKAR)
JUDGE

Devendra/April-2025