



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD
SECOND APPEAL NO.223 OF 2021**

Dharmveer s/o Ranba Sodle,
Age:- 55 years, Occ. Agri,
R/o Village Kava, Tq. and Dist. Latur,
At present R/o. Mahada Colony, Babhalgaon Road,
Latur, Tq. and Dist. Latur. ..Appellant
(Orig. Plaintiff)

Versus

1. Bhagwat S/o Narayan Ghar,
Age- 73 yrs. Occu- Agri,
R/o. Village Kava Tq. and Dist. Latur.
2. Ranba s/o Tukaram Sodale ..Died
Through LR's
- 2/A. Rukiminbai W/o Ranba Sodle ..Died
Through LR's
- 2/B Dnyanoba S/o Ranba Sodle,
Age- 68 yrs. Occu: Agri,
R/o Village Kava Tq. and Dist. Latur
- 2/C Jaichand S/o Ranba Sodle ..Died
Through LR's
- 2/C/1 Smt. Anjana W/o. Jaichand Sodle,
Age- 40 yrs. Occu: H.H.
- 2/C/2 Manoj S/o. Jaichand Sodle,
Age- 27 yrs. Occu- Agri
- 2/C/3 Sneha S/o. Jaichand Sodle
Age-23 yrs Occu- Agri
Resp. No.2/C/1 to 2/C/3 are R/o. Village Bori,
Tq. and Dist. Latur
- 2/D Shantabai W/o. Goroba Mele,
Age- 65 yrs. Occu: H.H.
R/o. Chincholiraowadi, Tq. and Dist. Latur
- 2/E Mandodari w/o. Uttamrao Devnure ..Died
Through her LR's
- 2/E/1 Rupesh S/o. Uttamrao Devnure,
Age- 43 yrs. Occu: Business
R/o. Balaji Nagar, Behind Atish Bar,
Vandana Tokies Road, Latur.

2/E/2 Ramesh S/o. Uttamrao Devnure,
Age- 40 yrs. Occu: Srvic
R/o. Sarswati Bhavan School
Kumbhar Pimpala Tq. Partur, Dist. Jalna

2/E/3 Rajesh S/o. Uttamrao Devnure
Age- 33 yrs. Occu: Service,
R/o. Murambi Post. Chakur,
Dist. Latur.

2/F Sukumarbai W/o. Govindrao Petkar,
Age – 58 Yrs. Occu: H.H.
R/o. Kava Tq. and Dist. Latur
At Present R/o. Telgaon Pati, Near Datta Mandir,
Tq. Chakur Dist. Latur.

2/G Youraj S/o Navnath Sodle ..Died
Through LR's

2/H Chandrakala W/o Gorakhnath Sodle,
Age- 52 yrs. Occ: H.H.
R/o Near Karange Flower Mill,
Veer Hanmantwadi, Tq. and Dist. Latur ..Respondents

...
Mr. H. P. Jadhav, Advocate for the Appellant.

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CORAM : S. G. CHAPALGAONKAR, J.
DATED : 21st MARCH, 2025.

ORDER:-

1. The appellant/original defendant no.1/C impugns judgment and order dated 24.04.2019 passed by District Judge, Latur in Civil M.A. No.238/2016 by which appellant's prayer to condone delay caused in filing Regular Civil Appeal has been rejected. (Hereinafter, parties are referred to by their original status for the sake of convenience and brevity).

2. The respondent no.1 instituted Special Civil Suit No.275/1996 for specific performance of contract based on

agreement to sale dated 10.04.1986 in respect of suit property. The suit was contested by legal representatives of original defendant, who died before filing of written statement. The Trial Court framed issues, recorded evidence and finally on 27.04.2010 decreed suit directing defendant to execute sale deed of suit property in favour of plaintiff after accepting balance consideration. The appellant/original defendant no.1/C filed Appeal alongwith Civil M. A. No.238/2016 before District Court at Latur seeking to condone delay of 6 years 7 months and 5 days. The learned District Judge rejected said application vide impugned order dated 24.04.2019. Hence, this Appeal.

3. Mr. Jadhav, learned Advocate appearing for appellant submits that learned District Judge adopted hyper technical approach in matter of delay condonation and rejected prayer of appellant. He submits that appellant was never informed by his Advocate about judgment and decree passed by Trial Court. The Appellate Court erroneously observed that notice of execution/decreed was served upon appellant. In fact, it was served to one Deepak so called son of appellant. The appellant has specifically stated that he do not have son namely Deepak. He would, therefore, urge to quash and set aside impugned order passed in Civil M.A. No.238/2016 with further direction to register Appeal for decision on merit.

4. Having considered submissions advanced, it is not in dispute that decree as passed by Trial Court has been already complied and sale deed has been executed in favour of plaintiff. Although Special Civil Suit No.275/1996 was decided on 27.04.2010, the appellant alleges that he was not aware about such decision till 18.08.2016. The appellant entered into witness box and stated that he was visiting office of his Advocate. If that was so, then plaintiff could have taken some action against Advocate. Admittedly, no such action is taken. The record shows that notice of execution was issued to appellant and as per Bailiff report it was served. It is true that, Bailiff report states that it has been received by son of appellant and his name is stated as Deepak. However, report of Bailiff clearly shows that notice was served at the address of appellant. Assuming that said Deepak is not son of appellant, notice appears to be served on address of appellant and received by person named as Deepak.

5. Even otherwise, if plaintiff was aware about pendency of suit against him and he was visiting Advocate's office, it cannot be believed that for six long years he was not aware about decree passed against him, so also execution of sale deed in pursuance of such decree through Court Officer. The appellant is not alleging fraud against his Advocate. The possibility that appellant is making false reason to condone delay cannot be ruled out.

6. The Supreme Court of India in case of ***Basawaraj and Another Vs. Special Land Acquisition Officer***¹ observed in paragraph nos.12 and 13 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.

13. The Statute of Limitation is founded on public policy, its aim being to secure peace in the community, to suppress fraud and perjury, to quicken diligence and to prevent oppression. It seeks to bury all acts of the past which have not been agitated unexplainably and have from lapse of time become stale.”

7. Similarly, in case of ***Pathapati Subba Reddy & Ors. Vs. Special Deputy Collector (LA)***², Supreme Court observed in paragraph no.26 as under:

“On a harmonious consideration of the provisions of the law, as aforesaid, and the law laid down by this Court, it is evident that:

(i) Law of limitation is based upon public policy that there should be an end to litigation by forfeiting the right to remedy rather than the right itself;

¹ (2013) 14 SCC 81.

² 2024 (5) Mh.L.J. 100.

(ii) A right or the remedy that has not been exercised or availed of for a long time must come to an end or cease to exist after a fixed period of time;

(iii) The provisions of the Limitation Act have to be construed differently, such as Section 3 has to be construed in a strict sense whereas Section 5 has to be construed liberally;

(iv) In order to advance substantial justice, though liberal approach, justice-oriented approach or cause of substantial justice may be kept in mind but the same cannot be used to defeat the substantial law of limitation contained in Section 3 of the Limitation Act;

(v) Courts are empowered to exercise discretion to condone the delay if sufficient cause had been explained, but that exercise of power is discretionary in nature and may not be exercised even if sufficient cause is established for various factors such as, where there is inordinate delay, negligence and want of due diligence;

(vi) Merely some persons obtained relief in similar matter, it does not mean that others are also entitled to the same benefit if the court is not satisfied with the cause shown for the delay in filing the appeal;

(vii) Merits of the case are not required to be considered in condoning the delay; and

(viii) Delay condonation application has to be decided on the parameters laid down for condoning the delay and condoning the delay for the reason that the conditions have been imposed, tantamounts to disregarding the statutory provision.”

8. Keeping in mind exposition of law by Supreme Court, when proceedings arise out of civil dispute between private parties, right accrued in favour of respondents on account of laxity/negligence on the part of appellant cannot be taken away. In present case, contentions of appellant in support of explanation for delay of 6 years 7 months and 5 days does not stand to scrutiny of preposition

of law holding the field. The attempt of appellant to continue proceeding in the matter do not appear to be bonafide.

9. In that view of the matter, this Court do not find any merit in Second Appeal. Hence, Second Appeal stands dismissed.

(S. G. CHAPALGAONKAR)
JUDGE

Devendra/March-2025