



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

**CIVIL APPLICATION NO.15301 OF 2023
IN
SECOND APPEAL (STAMP) NO.23044 OF 2023**

Shri. Parshuram S/o Jesu Rathod,
Age:- 67 years, Occ:- Service,
R/o M-2-6/05, Vir Tanhajinagar,
Cidco, New Aurangabad.

..Applicant
(Original Plaintiff)

Versus

1. Rajiya Begum Pyaremohmed
Sk. Mohin
Age: 62 years, Occu: Household,
R/o. House No.235/C/o M. A. Khan, Samtanagar
Aurangabad

2. The City Industrial Development Corporation
(Mah.) through it's Administrator Office at
Jalgaon Raod, Cidco, Udyog Bhavan,
Aurangabad

..Respondent
(Original Defendants)

...
Mr. B. V. Thombre, Advocate for Applicant.
Mr. M. K. Deshpande, Advocate for Respondent No.1.
Mrs. Snehal D. Kulkarni, Advocate for Respondent No.2.

...

**CORAM : S. G. CHAPALGAONKAR, J.
DATED : 12th FEBRUARY, 2025.**

ORDER:-

1. By this application, the applicant seeks to condone the delay of 1591 days caused in filing Second Appeal against judgment and decree dated 01.08.2018 passed by the District Judge, Aurangabad in Regular Civil Appeal No.26/2013, thereby upholding judgment

and decree passed by Civil Judge, Junior Division, Aurangabad in Regular Civil Suit No.1408/2012.

2. The applicant states that he received certified copies of the impugned judgment on 02.01.2019. However, could not file Appeal within time limit prescribed under Article 116 of the Limitation Act. The applicant states that he is a old age person and working as Labour on daily wages. In the year 2019, he was under treatment for stomach and chest pain at Akanksha Clinic. On 24.09.2019, he was diagnosed with 'sub acute appendicitis left renal calculus'. He was required to undergo surgery and discharged on 03.10.2019. According to the applicant, he was continuously under treatment from 19.01.2019 to 09.10.2019 for aforesaid ailment. On 19.05.2021, he undergone bypass surgery. Thereafter, he suffered eye infection, breathing trouble etc.. The applicant states that on 25.02.2022 his father expired after long drawn medical treatment. According to the applicant, due to his own medical treatment and expenses and weak economical, physical and mental condition, he could not file Appeal in time.

3. On 18.05.2023, respondent served legal notice claiming possession of suit property. Thereafter, applicant approached the Advocate and took his advice. As such, applicant filed present Appeal causing delay of 1591 days. The applicant states that

meanwhile due to outbreak of Covid-19 pandemic, there were more impediment in filing the Appeal. Lastly, Appeal is presented on 16.12.2023.

4. Mr. Thombre, learned Advocate appearing for the applicant submits that applicant was infact suffering mental illness from 2017. By inviting attention of this Court to the prescription of Dr. Quadri, he endeavours to impress upon the Court that since applicant was suffering from mental illness, Section 6 of the Limitation Act would apply and exemption from counting limitation period needs to be applied.

5. Per contra, Mr. Deshpande, learned Advocate appearing for the respondent no.1 and Mrs. Kulkarni, learned Advocate appearing for respondent no.2 oppose prayer to condone the delay stating that no sufficient cause is made out to condone huge delay.

6. Apparently, Regular Civil Appeal No.26/2013 has been disposed of vide judgment and decree dated 01.08.2018. The applicant claims to have received certified copy on 02.01.2019. Therefore, applicant will have to explain delay from January 2019 onwards. The applicant has placed on record prescription from Akanksha Clinic, which shows that it is prescription for normal medicine by local doctor. Similar prescriptions dated 11.03.2019, 08.5.2019 and 13.07.2019 are placed on record. From those

prescriptions exact ailment suffered by the applicant cannot be gathered. It simply refers to the complaint of chest pain, abdominal disorder, acidity etc.. It appears that on 24.09.2019 Ultra Sonography was advised to the applicant and sub acute appendicitis left renal calculus was diagnosed with suggestion of clinical correlation. The discharge card of Golden Care Hospital shows that applicant was admitted on 01.10.2019 and discharged on 03.10.2019 and treated for sub acute appendicitis. Thereafter, in February 2020, applicant suffered lumbar spine ailment. During Covid-19 he was treated at Mental Health Centre from 18.12.2021 onwards and prescribed certain medicines as outdoor patient. The father of the applicant appears to have expired on 25.02.2022. Again from March 2022 applicant was under consultation at Hedgewar Rugnalaya. The documents further shows that applicant was facing breathing trouble from January 2023 till May 2023.

7. It is true that there is no evidence to demonstrate that the applicant was continuously under medical treatment from the date of the District Court's judgment. However, the chain of circumstances indicates that, at short intervals, he repeatedly suffered from different ailments requiring medical supervision. Therefore, it cannot be said that the applicant had absolutely no reason or was not precluded from filing the appeal.

8. The Supreme Court of India in case of ***Collector, Land Acquisition, Anantnag & Anr. Vs. Katiji & Ors.***¹ observed as under:

“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.”

9. Considering law espoused by the Supreme Court of India, if the reasons as stated by the applicant are considered, it is evident that applicant is not benefited by making delay in filing the Appeal nor gross negligence can be attributed against him. He is old age person and undergone mental, physical ailments and financial duress. The applicant is litigating for right over immovable property. In such cases it cannot be expected that delay for each and every day is explained. The reasonable/plausible explanation can be accepted for making sufficient cause. Even in such cases, respondent can be compensated in terms of cost. However, cause of justice must be prime consideration. In that view of the matter, case is made out to condone the delay. Hence, following order:

ORDER

- a. Civil Application is allowed.
- b. Delay of 1591 days caused in filing the Second Appeal, is hereby condoned.

¹ (1987) 2 SCC 107.

c. Second Appeal be registered subject to removal of office objection and pre-condition of payment of cost of Rs.5000/- to the respondents by applicant. Cost to be paid within a period of six weeks from today.

(S. G. CHAPALGAONKAR)
JUDGE

Devendra/February-2025