



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD
CIVIL APPLICATION NO. 12077 OF 2022
IN SAST/28402/2021**

Vijay s/o Pandharinath Suryawanshi,
Age : 63 years, Occu. Agriculturist,
R/o. Nagarsoga, Tq. Ausa, Dist. Latur.

.....Applicant

VERSUS

1. Satyabhama w/o Pandharinath Suryawanshi,
Age : 80 years, Occu. Household.

2. Rajkumar s/o Pandharinath Suryawanshi,
Age : 59 years, Occu. Agriculturist.

Respondent Nos. 1 & 2 R/o Nagarsoga,
Tq. Ausa, Dist. Latur.

3. Sow Kamalbai w/o Dilip Patil,
Age : 65 years, Occu. Household,
R/o Bhusar Chincholi, Tq. Omerga,
Dist. Osmanabad.

4. Sow. Sindhu w/o Chandrakant Somwanshi,
Age : 55 years, Occu. Household,
R/o Wanwada, Tq. Ausa, Dist. Latur.

5. Meena w/o Venkat Jadhav,
Age : 55 years, Occu. Household,
R/o Devsinga, Tq. Tuljapur,
Dist. Osmanabad.

.....Respondents

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Advocate for Applicant : Mr. R. P. Bhumkar, Mr. V. D. Salunke
Advocate for Respondent Nos.1 to 5 : Mr. R. D. Biradar

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WITH
CIVIL APPLICATION NO. 12078 OF 2022
IN SAST/28402/2021

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CORAM : S. G. CHAPALGAONKAR, J.**Dated : January 16, 2025****ORDER:-**

1. The applicant seeks to condone the delay of 1541 days caused in filing Second Appeal against judgment and decree dated 02.05.2017 passed by District Judge, Latur in Regular Civil Appeal No.149/2013.
2. Heard Mr. V. D. Salunke, learned Advocate appearing for the appellant and Mr. R. D. Biradar, learned Advocate appearing for respondent Nos.1 to 5.
3. The learned Advocate appearing for the applicant submits that the applicant is original defendant no.3 in Regular Civil Suit No.522/2011. The respondent/plaintiff had instituted suit seeking decree of partition and separate possession against the defendant in respect of land survey No.212 admeasuring 6H 59R and survey No.215/2/C admeasuring 02H 87R situated at Nagarsoga and survey No.217 admeasuring 02H 41R situated at Davatpur, Taluka Ausa.
4. The Trial Court was pleased to decree the suit on 02.05.2013, thereby granting 1/9th share each in the suit properties to the plaintiff and defendants. The applicant/defendant filed Regular Civil Suit

Appeal No.149 of 2013 before District Judge, Latur, which has been dismissed on 02.05.2017. The applicant had no knowledge of the judgment and decree passed by the Appellate Court and it is only when he received notice of execution dated 24.06.2021, he got the knowledge about the dismissal of the Appeal. In March 2020, lock-down was declared owing to Pandemic situation. Later on, the applicant filed present appeal in the month of October 2021 with prayer for condonation of delay. The learned Advocate submits that the delay is unintentional. The valuable rights of the parties are subject matter of the suit, which requires decision on merit.

5. The learned Advocate appearing for respondents submits that the inordinate delay of 1541 days is not at all explained. The decree is passed on 02.05.2017. The Pandemic situation arose in March 2020. There is no explanation for the period of 3 years. The applicant had engaged an Advocate before Appellate Court, prosecuted his appeal and suffered dismissal. He cannot assert ignorance of decree passed in appeal. Consequently, he urges to dismiss the application.

6. Having considered submissions advanced, it can be observed that the applicant has suffered concurrent judgment and decree in partition suit as defendant no. 3. The plaintiff and other coparcener are

granted 1/9th share each in the suit property. The contentions of defendants are elaborately considered by both the Courts while recording concurrent findings rejecting his defence, as to not bringing all the properties in common hotchpotch.

7. In order to explain the delay of 1541 days, the applicant given sole reason that he was not aware about the decree passed in Appeal. Perusal of the judgment of District Judge depicts that Mr. D. K. Kulkarni, learned Advocate extensively argued the matter on behalf of the appellant. Thereupon, the decision dated 02.05.2017 has been rendered. In this background, the applicant's contention cannot be accepted. Even assuming that the applicant was not informed by his Advocate about the decision, the applicant was not prevented from approaching his Advocate and find out the stage of the Appeal. For the period of 3 years if the applicant was negligent or ignorant as to the stage of the appeal, he cannot now take benefit of his own wrong and seek to condone huge unexplained delay caused in filing the Second Appeal. Apparently, applicant just wants to keep the litigation pending and create obstacle in execution of the decree.

8. Section 3 of the Limitation Act bars the proceeding, once the period prescribed for filing such proceeding is expired. Section 5 of

the Limitation Act is exception to the general rule and empowers the Courts to condone the delay only when sufficient cause is made out.

9. In light of the aforesaid discussion, no such case is made out. Although, the merit of the case is not required to be gone into while considering the application for condonation of delay, this Court examined the merit in light of grounds of appeal. Apparently, there is no case to make out substantial questions of law in wake of concurrent finding of fact and admitted relationship between the parties and the nature of ancestral properties. Only defence was put into service is that the two houses i.e. one at Pune and second at Aurangabad in the name of two brothers of the applicant were not brought in common hotchpotch. Such contention was negated by both the Courts holding that both brothers are residing at Aurangabad and Pune since 1985 having their good earning and purchased the properties in their names. There is nothing to show joint nucleus. Since the agricultural land, which is subject matter of the suit having no potential to generate income that could have supported purchase of properties at Pune and Aurangabad. In that view of the matter, there is no merit in application.

10. Consequently, application stands dismissed.

11. Consequential Appeal also stands dismissed.

12. In view of dismissal of Second Appeal, Civil Application No.12078/2022 does not survive and accordingly stands disposed of.

(S. G. CHAPALGAONKAR, J.)