



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 13561 OF 2023

Chandrakala Namdev Solunke And Another

VERSUS

Nilawati Somnath Bhangе Through Gpa Somnath Wamanrao
Bhangе

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Advocate for the Petitioners : Mr.V. B. Anjanwatikar

Advocate for Respondent : Mr. P.B. Patil (Borse)

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CORAM : S. G. CHAPALGAONKAR, J.

Dated : June 16, 2025

ORDER :-

1. Petitioners impugn the order dated 13.5.2019 passed by the learned District Judge, Ambajogai, District Beed in Misc. Civil Application No.35 of 2018, whereby petitioners prayer to condone delay caused in filing application for restoration of the appeal has been rejected.

2. The respondent/original plaintiff instituted the Regular Civil Suit No.268 of 2002 seeking decree of possession in respect of the suit property. The Trial Court decreed the suit vide judgment and order dated 9.3.2009. Aggrieved petitioner/original defendant filed Regular Civil Appeal No.41 of 2009 before the learned District Judge, Ambajogai. However, said appeal came to be dismissed for want of

prosecution vide order dated 12.1.2018. Petitioner filed Misc. Civil Application No.35 of 2018 seeking to condone the delay caused in filing application for re-admission of appeal. The learned District Judge, after considering rival contentions, declined to condone delay observing that petitioners failed to show sufficient cause.

3. Being aggrieved by the aforesaid order, present writ petition is filed.

4. Mr. V.B. Anjanwatikar, learned advocate appearing for petitioners submits that dispute pertains to agricultural land. Parties are litigating over their rights on immovable property. In such a matter, it is necessary to adopt liberal approach in the matter of condonation of delay and it is desirable that parties are left for decision on merit. In support of his contentions, he relies upon decision of the Supreme Court in case of **Collector, Land Acquisition Officer, Anantnag and another Vs. MST. Katiji and others reported in 1987 (2) SCC 107.**

5. Per contra, Mr. P.B. Patil, learned advocate appearing for respondent would submit that learned District

Judge on appreciation of evidence tendered into service on behalf of petitioners found that explanation tendered is insufficient. Reason as employed in application was misleading. Mr. Patil submits that respondent was never diligent in conducting litigation. He would further point out that, although, impugned order is passed on 13.5.2019, present writ petition is filed on 3.10.2023 i.e. after four and half years. Even, delay in filing present writ petition is not at all explained. Therefore, the present writ petition itself deserves rejection on the ground of delay and laches.

6. Having considered submissions advanced, it can be observed that, dispute in the suit is pertaining to agricultural land. Petitioners/defendants alleged to have encroached upon suit land and enjoying benefit of the same. The Trial Court decreed suit of the plaintiff and directed delivery of possession of suit property in favour of the plaintiff. Petitioners/defendants filed appeal before District Judge, which has been dismissed for want of prosecution vide order dated 17.1.2018. Application for its re-admission was filed by petitioners alongwith application for condonation of delay of

75 days, however, learned District Judge declined to condone delay vide impugned order dated 13.5.2019.

7. It appears that petitioners in support of delay condonation put forward reasons as incorporated in paragraph nos.2 to 7 of their application. According to them, their father-in-law, namely Mukinda Solunke was ill due to paralysis attack since last two years. Therefore, they were busy in taking his care and could not pass necessary instructions to their advocate. Further, they contend that they were not aware about order as to dismissal of appeal for want of prosecution due to communication gap. In support of their contentions, they put on record documents as to medical treatment advanced to father-in-law i.e. Mukinda Solunke during the period from 2.7.2016 to 10.2.2018. On scrutiny of those documents, learned District Judge noted that father-in-law of petitioners was not suffering from paralysis, but, he was patient of degenerative spondylosis and osteoporosis. He was subjected to certain tests etc. during the period from 2016 to 2018. Finding conflict in pleadings as to illness of Mukinda and documents of his treatment, learned District Judge has observed that reason set out in the application is false. Apart-

from it, learned District Judge has observed that, the petitioners were negligent in prosecuting proceeding, which has caused prejudice to the respondent/plaintiff.

8. From scrutiny of record, it can be observed that the statement as to illness of father-in-law made by petitioners was partially incorrect. However, it is not false. Documents clearly spells out that Mukinda was suffering from illness, although not paralysis as contended in the application. Fact remains that, petitioners being ladies are required to take care of ailing family members. In this background, merely because ailment is incorrectly mentioned, reasons put forth by petitioners could not have been discarded. At this stage, reference can be made to observations of the Hon'ble Supreme Court in case of **Collector, Land Acquisition Officer, Anantnag and another Vs. MST. Katiji and others reported in 1987 (2) SCC 107**, wherein Supreme Court has laid down certain principles for dealing with the prayer for delay condonations. It is observed that ordinarily a litigant does not stand to benefit by lodging an appeal late. Refusing to condone delay can result in a meritorious matter being thrown out at the very threshold and cause of justice being defeated. Every day's delay

need not be explained. However, the doctrine must be applied in a rational common sense pragmatic manner. 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. 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. It is further observed 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 aforesaid principles to facts of the present case and looking to length of the delay i.e. 75 days, this Court finds that learned District Judge failed in error in declining to condone the delay.

10. It is true that even present writ petition is filed after four and half years, thereby raising challenge to impugned order passed by the learned District Judge. It is true that, aforesaid delay is not explained in the writ petition.

However, fact remains that impugned order is passed on 13.5.2019. Since March, 2020 there was pandemic situation and functioning of the Court was stalled till September 2021. Present writ petition is filed on 25.9.2023. In this background, definitely, there is substance in contention of learned advocate appearing for the respondent that delay in filing writ petition is not properly explained. However, this Court finds that considering nature of litigation, delay and laches in filing writ petition can be condoned by compensating the respondents by way of adequate costs.

11. While determining appropriate costs, this Court observes that respondent is a decree holder in RCS No.268.2002. Petitioners/defendants are enjoying possession of the suit land. Delay in proceeding would result in undue advantage to the petitioners. It is contended that petitioners are taking irrigated crop by cultivating suit land. In this background, looking to length of the delay and advantage that could have been derived by the petitioners, this Court deems it proper to impose costs of Rs.1.00 Lakh upon petitioners, which shall be condition precedent for considering application for re-

admission of appeal by the learned District Judge. In the result, following order is passed.

O R D E R

- i. Writ Petition is **allowed**.
- ii. The impugned judgment and order dated 13.5.2019 passed by the learned District Judge, Ambajogai in Misc. Civil Application no.35 of 2018 is hereby quashed and set aside.
- iii. Misc. Civil Application No.35 of 2018 stands allowed. Delay of 75 days is hereby condoned.
- iv. The learned District Judge shall consider application for re-admission of appeal on its own merit subject to condition that petitioners deposit costs of Rs.1.00 Lakh (Rs. One Lakh) with District Court within a period of **four weeks** from the date of this order. On deposit of such costs, amount be released in favour of the respondent/plaintiff.
- v. Writ Petition stands disposed of.

(S. G. CHAPALGAONKAR, J.)

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