



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

SECOND APPEAL NO. 533 OF 2023

**ANJANABAI CHANDRABHAN JADHAV DIED THR LRS
CHADRABHAN GENU JADHAV AND ORS**

VERSUS

KARBHARI PANDHARINATH BANKAR AND ORS

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Mr. Vitthal Haribhau Dighe, Advocate for Appellants.

Mr. S. B. Kadu, Advocate for Respondent No.1.

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**CORAM : S. G. CHAPALGAONKAR, J.
DATED : 03rd APRIL, 2025.**

P.C.:-

1. The appellants (original applicants) impugn judgment and order dated 17.07.2023 passed by District Judge-2, Kopargaon, Dist. Ahmednagar in Civil Miscellaneous Application No.14/2021, thereby declining to condone delay caused in filing Regular Civil Appeal No.143/2009.

2. Mr. Dighe, learned Advocate appearing for appellants submits that respondent-Karbhari had instituted Regular Civil Suit No.143/2009 seeking relief of declaration and perpetual injunction in respect of suit property. The suit has been partly decreed vide judgment and decree dated 26.03.2015. The appellants herein filed Appeal before District Judge, Kopargaon alongwith application for delay condonation. However, said application has been erroneously rejected. He submits that litigation was infact looked into by original defendant Anjanabai Jadhav, who died on 19.04.2020. Thereafter applicants received notice of execution from Tahsildar on 15.03.2021. Immediately, thereafter steps were taken to file Appeal alongwith application for delay condonation. He submits that parties are litigating for their

rights over immovable properties. The applicants have not derived any advantage by making such delay. Therefore, Appellate Court ought to have adopted liberal approach in the matter of condonation of delay and could have decided matter on merit. In support of his submissions he relies upon judgment of this Court in case of *Ashok S/o Balaji Ratan Vs. Nagpur Improvement Trust*¹ as well as judgment of Supreme Court in case of *N. Balkrishnan Vs. M. Krishnamurthy*².

3. Per contra, Mr. Kadu, learned Advocate appearing for respondent submits that there was inordinate delay in filing Appeal. The Trial Court decided suit on 26.03.2015, whereas Appeal alongwith application for condonation of delay had been instituted on 26.07.2021. There was delay of more than six years for which there is no explanation. He submits that unless sufficient cause is made out, Courts are not required to condone delay on any other consideration.

4. Having considered submissions advanced, it can be observed that decision rendered in month of March 2015 by Trial Court in Regular Civil Suit No.143/2009 was challenged by filing Appeal in the year 2021. There was delay of more than six years in filing Appeal. It was for appellants to explain delay by giving sufficient cause. Apparently, reasons incorporated in application provides no explanation for delay for period from 2015 to 2020, when Anjanabai i.e. original defendant is said to have been expired. During her lifetime, Anjanabai did not file any appeal, which suggests that she accepted the decree. Thereafter, her legal representatives presented Appeal, which has been delayed by six years. Although it is contended that appellants could get knowledge of execution

¹ 2004 (6) BOM CR 861.

² (1998) 7 SCC 123.

proceeding after receipt of notice from Tahsildar, during course of evidence appellant-Kusum admitted that she attended office of Tahsildar in proceeding of partition. Even she was aware about discussion at Tahsildar's office as regards to giving effect to decree of partition. This admission clearly indicates that, since 2020 or even prior to that Anjanabai as well as Kusum were well aware about proceeding of execution and they never took any step for filing of Appeal.

5. In this background, even considering law laid down by this Court in case of **Ashok S/o Balaji Ratan** as well as by Supreme Court in case of **N. Balkrishnan** (supra), appellants cannot derive any advantage to claim that a case is made out for condonation of delay. In case of **Basawaraj and Anr. Vs. Special Land Acquisition Officer**³, Supreme Court observed in paragraph no.12 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.”

6. It is apparent that if a party, by its own negligence, fails to take steps within a reasonable period and does not file an appeal or application within the time stipulated by law, the provisions of the Limitation Act must be given full effect. Even the Court does not

³ (2012) 14 SCC 81.

have the power to condone the delay on grounds of sympathy or due to the merits of the matter. Although in some cases, right of parties get prejudiced on account of rejection of cause on technical ground of delay, provision of Limitation Act needs to be given effect in appropriate case. In present case, there is absolutely no explanation for non-filing of Appeal from 2015 to 2020. In these circumstances, no case is made out to interfere in well reasoned impugned order passed by learned District Judge, thereby application to condone delay has been rejected. In result, no substantial question of law arises for consideration in this Second Appeal. Second Appeal sans merits. Hence, dismissed.

7. In view of dismissal of Second Appeal, pending Civil Application stands disposed of.

(S. G. CHAPALGAONKAR)
JUDGE

8. At this stage, Mr. Dighe, learned Advocate appearing for appellants submits that there was interim protection during pendency of Appeal as per order dated 04.12.2023 and same may be continued for the period of six weeks, so that appellants may take chance before Supreme Court of India.

9. The learned Advocate appearing for respondent submits that appellants are trying to alienate property and killing time by adopting tactics, therefore, such extension may not be granted.

10. Considering submissions advanced, since there was interim relief operating as per order dated 04.12.2023, same be remained in force for the period of six weeks from today. However, till then

appellants shall maintain *status quo* as regards to suit property as on today.

(S. G. CHAPALGAONKAR)
JUDGE

Devendra/April-2025