

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 2160 OF 2025

Arun Bhimrao Dandwade (deceased)
through LRs.

...Petitioners

Versus

Appaso Shivappa Dandwade (deceased)
through LRs. And ors.

...Respondents

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KULKARNI

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Mr. Umesh Mankapure, for the Petitioners.

Mr. Nagesh Chavan, for the Respondent Nos. 1A to 1E, 8B, 9,
10B and 11.

CORAM: N. J. JAMADAR, J.

DATED: 24th FEBRUARY, 2025

ORDER:-

1. This petition under Article 227 of the Constitution of India, takes exception to an order dated 13th June, 2024 passed by the learned District Judge in MCA/119/2024, whereby the delay of 2 years 4 months and 24 days in filing an appeal against the decree passed in RCS/591/2000 came to be condoned subject to payment of cost of Rs.25,000/-.

2. Arun Dandwade, the predecessor-in-title of the petitioners, and the co-plaintiffs had instituted a suit for partition and separate possession of the suit properties. By a judgment and order dated 21st November, 2011 the suit came to be decreed.

3. Appaso Dandwade, deceased defendant No.5 and the predecessor-in-title of respondent Nos.1A to 1E, preferred an application for condonation of delay in filing the appeal against the said decree. It was, *inter alia*, contended that the learned Advocate, who represented the defendants, did not inform them about the progress of the trial. The applicants came to know about the passing of the decree in RCS/591/2000 only after service of notice in Final Decree Application No.13 of 2013. Thereupon, the applicant obtained the certified copies of the judgment and decree and it was realized that the written statement was not filed on behalf of the said applicants. Thus, the application was filed for condonation of delay in preferring the appeal.

4. The application was resisted by the plaintiffs. The learned District Judge recorded the evidence.

5. By the impugned order, the learned District Judge was persuaded to allow the application observing that the applicants being the farmers were not well-versed in the legal process and they had entrusted the matter to their Advocate. Though they ought to have been diligent, yet there did not appear deliberate inaction. The learned District Judge was

thus persuaded to condone the delay subject to payment of costs of Rs.25,000/-.

6. Mr. Mankapure, the learned Counsel for the petitioners, would urge that no cause, much less sufficient one, was ascribed for the delay. The bald assertion in the application that the applicants were unaware of the progress of the said suit and the concerned Advocate did not apprise them of the developments in the said suit could not have been construed as a sufficient cause to condone the delay. Mr. Mankapure laid emphasis on the fact that the notice of Misc. Diary No.3 of 2012 filed to correct the decree passed in RCS/591/2000 was served on the defendants. Yet, none had appeared in the said Diary Application, which came to be allowed by an order dated 30th March, 2013. Therefore, it cannot be said that the applicants had no knowledge about the passing of the decree in RCS/591/2000. Placing reliance on the decision of the Supreme Court in the case of *Esha Bhattacharjee vs. Managing Committee of Raghunathpur Nafar Academy and others*¹, Mr. Mankapure strenuously submitted that the impugned order deserves to be quashed and set aside.

1 (2013)12 SCC 649.

7. Mr. Chavan, the learned Counsel for respondent Nos.1A to 1E, 8B, 9, 10B and 11, supported the impugned order. It was submitted that a party can not be made to suffer on account of inadvertence or lack of diligence on the part of the Advocate, to whom such party entrusts the defence of the proceedings. Attention of the Court was invited to the decision of the Supreme Court in the case of *N. Balakrishnan V/s. M. Krishnamurthy*² and an order passed by this Court in the case of *Mary Pereira vs. Anant*³.

8. At the outset, it is necessary to note that the petition challenges an order of condonation of delay. It is trite, there is a subtle yet significant difference in the approach to be adopted where the delay is condoned by the Court at the first instance and the case where the Court of first instance has declined to condone the delay. In the former case, where there is a positive exercise of discretion to condone the delay, ordinarily, the Appellate Court or the Court exercising supervisory or revisional jurisdiction is not expected to lightly interfere with the exercise of such positive discretion unless the decision is perverse or there is no reason for condonation of delay. On the contrary, in the latter case, the

2 AIR 1998 Supreme Court 3222,

3 (2023) 3 Mh.LJ 487.

entire matter is open before the superior Court and it can examine for itself whether a case for condonation of delay is made out.

9. In the case of *N. Balakrishnan* (supra), on which reliance was placed by Mr. Chavan, the aforesaid distinction in the approach was illuminatingly postulated by the Supreme Court, in the following words:

“9. It is axiomatic that condonation of delay is a matter of discretion of the court. Section 5 of the Limitation Act does not say that such discretion can be exercised only if the delay is within a certain limit. Length of delay is no matter, acceptability of the explanation is the only criterion. Sometimes delay of the shortest range may be uncondonable due to want of acceptable explanation whereas in certain other cases delay of very long range can be condoned as the explanation thereof is satisfactory. Once the court accepts the explanation as sufficient it is the result of positive exercise of discretion and normally the superior court should not disturb such finding, much less in reversional jurisdiction, unless the exercise of discretion was on whole untenable grounds or arbitrary or perverse. But it is a different matter when the first court refuses to condone the delay. In such cases, the superior court would be free to consider the cause shown for the delay afresh and it is open to such superior court to come to its own finding even untrammelled by the conclusion of the lower court.

10. The reason for such a different stance is thus:

The primary function of a court is to adjudicate the dispute between the parties and to advance substantial justice. Time limit fixed for approaching the court in different situations is not because on the expiry of such time a bad cause would transform into a good cause.

11. Rules of limitation are not meant to destroy the right of parties. They are meant to see that parties do not resort to dilatory tactics, but seek their remedy promptly. the object of providing a legal remedy is to repair the damage caused by reason of legal injury. Law of limitation fixes a life-span for such legal remedy for the redress of the legal injury so suffered. Time is precious and the wasted time would never revisit. During efflux of time newer causes would sprout up necessitating newer persons to seek legal remedy by

approaching the courts. So a life span must be fixed for each remedy. Unending period for launching the remedy may lead to unending uncertainty and consequential anarchy. Law of limitation is thus founded on public policy. It is enshrined in the maxim *Interest reipublicae up sit finis litium* (it is for the general welfare that a period be put to litigation). Rules of limitation are not meant to destroy the right of the parties. They are meant to see that parties do not resort to dilatory tactics but seek their remedy promptly. The idea is that every legal remedy must be kept alive for a legislatively fixed period of time.

12. A court knows that refusal to condone delay would result foreclosing a suitor from putting forth his cause. There is no presumption that delay in approaching the court is always deliberate. This Court has held that the words "sufficient cause" under Section 5 of the Limitation Act should receive a liberal construction so as to advance substantial justice vide *Shakuntala Devi Jain V/s. Kuntal Kumari* (AIR 1969 SC 575) and *State of W.B. V/s. Administrator, Howrah Municipality* ((1972) 1 SC 366).

13. It must be remembered that in every case of delay there can be some lapse on the part of the litigant concerned. That alone is not enough to turn down his plea and to shut the door against him. If the explanation does not smack of *mala fides* or it is not put forth as part of a dilatory strategy the court must show utmost consideration to the suitor. But when there is reasonable ground to think that the delay was occasioned by the party deliberately to gain time then the court should lean against acceptance of the explanation. While condoning delay the Court should not forget the opposite party altogether. It must be borne in mind that he is a loser and he too would have incurred quiet a large litigation expenses. It would be a salutary guideline that when courts condone the delay due to laches on the part of the applicant the court shall compensate the opposite party for his loss."

(emphasis supplied)

10. In the light of the aforesaid exposition of law, if the facts in the case at hand are appraised, Respondent Nos. 1A to 1E, 8B, 9, 10B and 11 claimed that being farmers, they were not well-versed with the legal process and they had reposed trust and confidence in Advocate, who was appointed to defend the suit. The said Advocate did not apprise them about the

progress of the suit and they learned about the same only when notices of the final decree proceedings were served on them.

11. It could be urged that the respondents ought to have been more vigilant. Nonetheless, the cause ascribed by the respondents cannot be said to be wholly unsustainable. The material on record does not indicate that there was deliberate inaction or negligence on the part of the respondents. The suit was for the partition of the joint family properties. The learned District Judge, upon appraisal of evidence, has recorded a satisfaction that there was a sufficient cause for not preferring the appeal within the stipulated period.

12. Since the learned District Judge has exercised a positive discretion based on material and evidence adduced before him, this Court does not find any justifiable reason to interfere with the exercise of discretion to condone the delay.

13. Hence, the petition stands disposed.

[N. J. JAMADAR, J.]