



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

SECOND APPEAL NO.234 OF 2024

APPELLANT : Keshav S/o. Baduji Paratkar,
On R.A. Aged about : 63 years, Occu: Labour, R/o.
Lane No.5, Frezarpura, Mishra Line,
Paratwada, Amravati, Tq and Dist.
Amravati.
..VERSUS..

RESPONDENT : Suraj S/o. Jaypal Patil,
On R.A. Aged about : 39 Years, Occu: Property
Agent, R/o. Prashant Nagar, Amravati, Tq,
and Dist. Amravati.

Mr H. A. Biherani, Advocate for Appellant.
Mr D. P. Dapurkar, Advocate for Respondent.

CORAM : M. W. CHANDWANI, J.

DATED : 24th MARCH, 2025.

ORAL JUDGMENT

1. Heard.

2. This appeal challenges the rejection of the first appeal by the learned District Judge-3, Amravati, whereby the application under Section 5 of the Limitation Act, 1963 for condonation of delay caused in filing the first appeal has been dismissed on the ground that the delay has not been properly explained particularly, for the period of January and February, 2020.

3. The following substantial question of law came to be framed by order dated 06.03.2025.

“Whether the First Appellate Court was right in not considering the reason mentioned in the application for condonation of delay”

4. With the consent of the learned counsels appearing for the parties, the matter is taken up for final hearing at the admission stage.

5. Mr Biherani, learned counsel appearing for the appellant submitted that the appellant is a labourer and most of the time, he used to remain out of the city. During the relevant period, the appellant had gone to Mumbai to do labour work. In December - 2019, the appellant returned to Amravati. In January and February - 2020, the appellant fell ill. In February - 2020, the pandemic situation started and all the activities were suspended. In March - 2023, he came to know about the decree passed in the suit for possession by the respondent, therefore, he applied for certified copy. An application for condonation of delay came to be filed before the learned District Judge, Amravati. According to him, the appellant came to know for the first time about the judgment and decree passed by the learned Trial Court in March - 2023 and therefore, within three months, the first appeal came to be filed. The contention is that the counsel for the respondent did not cross examine the appellant.

The sum and substance of the argument of the learned counsel for the appellant is that the Appellate Court could have adopted a liberal approach and could have condoned the delay. Therefore, he seeks setting aside of the rejection of the application for condonation of delay.

6. Per contra, Mr Dapurkar, learned counsel appearing for the respondent submitted that though the appellant participated in the proceedings before the Trial Court but could not produce himself before the learned Trial Court for cross examination by the appellant despite of filing of the affidavit of evidence. According to him, the appellant was very well aware about the proceedings and in spite of knowledge, he did not prefer an appeal till the execution of the proceedings started. The delay is not a *bona fide* one and no sufficient cause has been shown. Therefore, the First Appellate Court rightly refused to condone the delay in filing the first appeal.

7. Perusal of the record goes to show that the impugned decree came to be passed on 04.09.2015 by the learned Trial Court in Regular Civil Suit No.237 of 2011 and on 16.06.2023, the application for condonation of delay came to be filed before the learned District Judge, Amravati, therefore, there is a delay of almost seven years and nine months. The reason brought before the learned First Appellate Court is

that the appellant was working as a labourer at Mumbai and he returned to Amravati in the month of December - 2019. It is not in dispute that the appellant is permanent resident of Amravati. Though, he was doing labour work at Mumbai from January – 2015, the fact cannot be disputed that intermediately, he may be visiting Amravati, it being his home town. That apart, no document has been produced showing that the appellant fell ill during the period of January and February - 2020. No doubt that thereafter there was pandemic in entire country for two years, the appeal came to be filed after the pandemic period was over i.e. more than one year and three months later.

8. No doubt, a common thread runs through various authorities of the Hon'ble Apex Court and this Court that while condoning the delay, a liberal approach is to be adopted and substantial justice cannot be denied for technical reason, provided that sufficient cause is shown by the litigant. Moreover, one more principle is to be considered while considering the delay i.e. that the delay is not *mala fide*.

9. Considering the facts of the present case, there is no statement made by the appellant that from January - 2015 to December – 2019, he never visited Amravati particularly, in view of the fact that he resides in the suit property itself which is situated at Amravati. That apart, no

document has been filed on record to justify the delay. I do not find that the learned First Appellate Court has committed any error in not condoning the delay for filing the first appeal. The appeal is without merit, therefore, the substantial question of law is answered accordingly.

(M. W. CHANDWANI, J.)

Tambe