

MHLA040003152022	Presented on	:	21-11-2022
	Registered on	:	21-11-2022
	Decided on	:	05-04-2023
	Duration	:	<u>Y</u> <u>M</u> <u>D</u> 00 04 15

IN THE COURT OF DISTRICT JUDGE-1, AHMEDPUR,
AT: AHMEDPUR DIST-LATUR

(Presided over by Vilas V. Gaikwad, District Judge-1, Ahmedpur)

CIVIL MISC.APP.(DELAY) NO.23 OF 2022.

EXH.No. 25.

Ramakant s/o Sangaram Bujare,
Age:- 48 years, Occu.: -Service,
R/o. Dhalegaon, Tq. Ahmedpur,
District - Latur. } ... PETITIONER

V e r s u s

1. Tirvanbai w/o Sangaram Bujare,
Age:- 75 years, Occu.: - Nil.
 2. Shivaji s/o Sangaram Bujare,
Age:- 54 years, Occu.: - Agri.,
 3. Nirmala w/o Ram Bombade (died)
Through her legal heirs,
- 3/1. Sachin s/o Ram Bombade,
Age:- 37 years, Occu.: -Agri.,
Above three respondents are

R/o. Dhalegaon, Tq. Ahmedpur,
District - Latur.

3/2. Sushil s/o Ram Bombade,
Age:- 30 years, Occu.: -Teacher,
R/o. Bhatangali, Tq. and Dist. Latur.

3/3. Sunita w/o Balaji Jatal,
Age:- 32 years, Occu.: -H.H.,
R/o. Dagadwadi, Tq. and
Dist. Latur.

} ... RESPONDENTS

Application under section 5 of the Limitation Act.

Advocates' Appearance :

Adv. Mr. K. G. Deshpande – For Petitioner.
Adv. Mr. R.V. Gaikwad – For Respondent nos.2, 3/1,
3/2 and 3/3

J U D G M E N T
(Delivered on 05.04.2023)

(1) Application under Section 5 of the Limitation Act.

(2) This is an application under section 5 of the Limitation Act, to condone delay caused in filing appeal, against judgment and order in Civil Miscellaneous Application No. 123/2022 (**heirship certificate**) rendered by learned 3rd Jt. Civil Judge Junior Division, Ahmedpur, District Latur.

Brief facts:-

(3) The respondent No.1 herein namely Tirvanbai Sangram Bujare, had filed Civil Miscellaneous Application No.

123/2022 for grant of heirship certificate, being heirs of deceased Sangram Vyankoba Bujare. The learned trial court by order dated 26th March, 2022, granted heirship certificate in favour of the respondent nos.1, 2, 3/1, 3/2, 3/3 and petitioner.

(4) The petitioner Ramakant being aggrieved and dissatisfied with the said order wanted to prefer appeal. However, since the petitioner acquired knowledge of grant of heirship certificate on 8th November, 2022, delay has been caused to file appeal. It is also contended that, his daughter was admitted in Raut Hospital, Latur. He therefore, was busy in looking after his daughter. Further, he wanted to challenge the grant of heirship certificate, on the ground that he never signed petition preferred before learned trial court.

(5) The respondent no.1 was ex-parte.

(6) Respondent Nos.2 and 3/1 have filed their reply (**Exh.23**). It is their contention, the application is filed with false contention. The reason behind delay is not properly explained. The heirship certificate was granted by the learned trial court after due enquiry. Further, it is admitted that, the documents pertaining to illness are not proper. The petitioner is working as office clerk in high school at Dhalegaon, Tq. Ahmedpur, District Latur. He is wise person. Eventually, prayed for dismissal of the petition.

(7) Heard Mr. K. G. Deshpande, learned advocate representing petitioner and Mr. R.V. Gaikwad, learned advocate representing respondent nos.2 and 3/1 to 3/3.

(8) The following points arise for my determination and I have recorded my findings thereon, against each of them, for the reasons given below :

	<u>POINTS</u>	<u>FINDINGS</u>
1.	Whether the petitioner showed : sufficient cause behind non filing appeal against judgment and order in Civil Misc. Application No. 123/2022 ?	Yes
2.	Whether delay caused in filing appeal : against order dated 26 th March, 2022 passed in Civil Misc. Application No. 123/2022 deserves to be condoned ?	Yes.
3.	What order ? :	Petition is allowed.

REASONS

As to Point Nos.1 to 3 :-

(9) The Honourable Supreme Court in **Collector Land Acquisition Anantnag and anr. Vs. Mst. Katiji & Ors. AIR 1987, 1352**, given following guidelines how to deal with applications for condonation of delay.

1. Ordinarily a litigant does not stand to benefit by lodging an appeal late.
2. Refusing to condone delay can result in a meritorious matter being thrown out at the very threshold and

cause of justice being defeated. As against this when delay is condoned the highest that can happen is that a cause would be decided on merits after hearing the parties.

3. “Every day’s delay must be explained” does not mean that a pedantic approach should be made. Why not every hour’s delay, every second’s delay? The doctrine must be applied in a rational common sense pragmatic manner.
4. 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.
5. 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. In fact he runs a serious risk.
6. It must be grasped 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.

(10) The respondent No.1 Tirvanbai had filed Civil Miscellaneous Application No. 123/2022, before learned trial court for grant of heirship certificate. The certified copy of the said petition shows that, this petitioner Ramakant and rest of the respondents herein showed legal heirs of deceased Sangaram Bujare. The learned trial court by order dated 26th March, 2022

granted heirship certificate in the name of present petitioner and all the respondents.

(11) The petitioner wants to challenge the said order on the ground of fraud played upon the court. According to him, he acquired knowledge of the said order dated 8th November, 2022. He had applied for certified copies of said order on 14th November, 2022. Fled appeal alongwith this delay condonation petition on 21st November, 2022. The order in Civil Miscellaneous Application No. 123/2022 has been passed on 26th March, 2022. The appeal therefore ought to have been filed on or before 26th April, 2022. The same has been presented alongwith this delay condonation petition on 21st November, 2022. It is therefore, almost seven months delayed.

(12) The Honourable Supreme Court in Collector Land acquisition has held that, meritorious litigation should not be thrown out of the court, without adjudication, mere on the technical ground of delay. Further, it has been held that the delay should be construed liberally. Even it has been held that it is not necessary to explain day to day delay.

(13) According to the petitioner, since his daughter suffered ailment he was looking after the daughter. He has filed certain prescriptions issued by Raut Hospital, Chandra Nagar, Latur. Those refer to his daughter Pooja Bombade. The

prescriptions belongs to month of April, May, June, July, August, September and October - 2022. There is no reason to disbelieve the said documents. Each documents appear to have been issued for duration of 30 days medicine. It is consistently for 6 - 7 months.

(14) I am of the opinion that, mere in order to get condone delay caused in filing in appeal, father will not pose false reason of daughter's ailment. Therefore, though the ailment of petitioner's daughter has been objected by learned advocate Mr. Gaikwad, representing respondent nos.2 and 3/1 to 3/3, however the said resistance needs to be ignored.

(15) When daughter is ill father must take care of daughter. If father was busy being taking care of daughter, in order to condone the delay, that can be a sufficient cause as contemplated in section 5 of the Limitation Act. Thus, safely it can be held that, the petitioner had reason for non filing appeal within stipulated time. The delay therefore, deserves to be condoned. Thus, I answer point nos.1 & 2 in affirmative and proceed to pass the following order.

:: O R D E R ::

[1] Petition is allowed.

- [2] Delay caused in filing appeal against judgment and order dated 26th March, 2022 in Civil Miscellaneous Application No. 123/2022, rendered by learned 3rd Jt. Civil Judge Junior Division, Ahmedpur is condoned.
- [3] Office is directed to register appeal as per rules.

Date: 05/04/2023
AHMEDPUR.

[Vilas V. Gaikwad]
District Judge-1, Ahmedpur
District Latur.