

MHSN040008052023



Civil Misc. Application No.47/2023

Amarsinh Bhagwanrao Patil - Applicant

Vs.

Ramchandra Hari Patil, etc. 6 - Respondents

ORDER BELOW EXH. 1

1] The applicant has filed this application for condonation of delay under Section 5 of the Limitation Act caused for preferring appeal against the judgment and decree passed by 5th Jt. Civil Judge, Jr.Dn. Islampur in RCS No.559/2016 on 07.01.2023.

2] Read the application and reply filed by respondent no.6 at Exh.37. Heard ld. Advocate for the applicant. In spite of opportunity given to the respondents they did not argue the matter. Perused the record.

3] Ld. Advocate for the applicant has submitted that the applicant is a retired Military man and he has been honoured by the Government of India for his service at Manipur. Now the applicant is old person of 83 years and he

is suffering from various ailments including heart disease, high blood pressure and asthma and he has undergone heart operation. Due to change in atmosphere he remains ill and not able to travel. He is taking treatment from Military Hospital, Pune and from Dr.Yogesh Lad, Pune. During pandemic situation of Covid 2019 he could not attend the court and consequently his evidence was closed and the suit came to be decided on 07.01.2023 and the suit for partition came to be dismissed. He came to know the decision on 15th July 2023 thereafter he applied for certified copies on 20.07.2023 and obtained the copies on 02.08.2023. As such there is delay of 185 days in preferring the appeal. The applicant has better success in the appeal. Because of his illness and old age the delay has been caused. The applicant has produced his affidavit Exh.31 and medical certificate in support of his contention. Therefore, Ld. Counsel for the applicant prayed for condonation of delay.

4] The respondent no.6 has resisted the application on the ground that the applicant had knowledge of the proceeding and he was conducting the proceeding before the Trial Court. He was knowing the decision of the suit. There are no sufficient grounds to condone the delay. The applicant has not produced any document in support of his contention. Therefore, the respondent no.6 has prayed to reject the application.

5] The respondent no.1, 3 and 4 failed to file their say. Therefore the application proceeded without their say. The respondent no.2, 5 and 7 failed to appear therefore, the application proceeded ex parte against them.

6] Perusal of the record, it shows that the suit for partition and separate possession filed by the applicant has been dismissed by the Trial Court by judgment and decree dated 07.01.2023. According to applicant, he has undergone heart operation and suffering from heart disease, high blood pressure and asthma. He has produced medical certificate issued by Dr.Yogesh Lad showing that the applicant is suffering from HTN/CAD/CAMG -2005/BP/DLP/Asthama since last 20 years and taking treatment at Military Hospital. The applicant is around 83 years old retired Military man. There is delay of 185 days. The rights of the parties in the immovable properties are involved in the litigation. Considering the old age of the applicant and the various ailments, it shows that the applicant has shown sufficient cause for condonation of delay.

7] The Hon'ble Apex Court in the case of Collector, Land Acquisition Anantnag V/s Mst. Katiji and others, (1987) 2 SCC 107 has laid down guidelines while dealing with the application for condonation of delay in preferring appeal, which are as follows :-

- (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 seconds 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."

8] Considering the short duration of the delay and the grounds for condonation, the applicant is entitled for condonation of delay. The contesting respondent no.6 may suffer some inconvenience because of condonation of delay,

but, that can be compensated by awarding some cost. Hence the following order-

ORDER

1. The application is allowed.
2. The delay caused in preferring appeal against the judgment and decree passed by 5th Jt. Civil Judge, Jr.Dn. Islampur in RCS No.559/2016 on 07.01.2023 is hereby condoned on payment of cost of Rs.2,000/- (Rs.Two Thousand Only) to be paid to the respondent no.6.
3. The applicant shall deposit the cost amount within 15 days from the date of order. After depositing the cost amount the appeal be registered after due scrutiny.
4. The application is disposed of accordingly.

Date -28-07-2026.

(R.B.Rote)
District Judge-2 Islampur.