

ORDER BELOW EXH. 05
Shivaji Soma Aakale etc vs. Raju Birajdar etc

1. This application is filed by the applicant in the matter of application for delay condonation for restoration to grant stay to the decree of Ld. trial Court.

2. It is contention of the applicant that, deceased Shivaji Soma Birajdar filed R.C.A.21/2011 against the judgment and decree of C.J.J.D., Mangalwedha in R.C.S.No.49/1999. Said appeal was disposed of because of same reason by the Court and therefore, deceased Shivaji filed delay condonation application No.55/2018. Shivaji expired on 02.07.2022 and before 3-4 months he was suffering from ailments. So, was remained absent and accordingly Court disposed of said application on 24.06.2022. Deceased Shivaji was only Karta of their family and therefore applicants were not knowing about any matter pending before the Court. The applicant received notice from T.I.L.R. Office and that time they met to the advocate and came to know about the decision of the matter. The opponents not got the decree in R.C.S.No.49/1999 on merits but by misleading the Court opponent now filed Darkhast No.04/2016 and matter is now pending before the Tahsildar for execution of the order of possession and therefore it is necessary to stay the decree otherwise the applicants will suffer irreparable loss.

3. The opponents appeared and they have filed say to the application at Exh.11 in which they contended that deceased Shivaji intentionally not filed W.S. in R.C.S.No.49/1999 though he served with notice on 05.07.2006. there was half share of Soma Birajdar in Gut No.15 and 111 i.e. suit property and accordingly Ld.C.J.J.D., passed judgment and decree. Thereafter, Shivaji filed R.C.A.No.21/2011 before the District Court, Pandharpur against this opponent and said matter was disposed of on 22.07.2016 by the Court. The applicants were not interested in contesting the appeal but only to delay the execution of the decree filed appeal and not took care of it. Then against said order it was for the applicant to go before the Hon'ble High Court by filing second appeal but against this he filed delay application No.55/2018 to take the appeal on record. There was 20 months delay and that time also the applicant remained absent. Therefore, the matter was disposed of by the Court.

4. The opponents further contended that while disposing of the appeal on 22.07.2016 the Court mentioned that the applicant was remained absent and so also he failed to deposit paper book charges and hence the matter was dismissed. The contention of the applicant that on 21.03.2018 first time he got knowledge about the disposal of the appeal is false one, but the applicant was knowing about the matter before the T.I.L.R. office, Mangalwedha as he received notice from said office about

measurement and that time he himself was present. Before that on 15.10.2016 filed application before Ld.C.J.J.D.,Mangalwedha and obtained stay to the decree of Court by suppressing material facts. As per decree in R.C.S.No.49/1999 opponents got their right of half share in the property of their grandfather and the applicants have no concern with the same. The application for delay condonation and contentions in the same are afterthought. Therefore, application deserves to be rejected with costs.

5. Considering the rival contentions of the parties, following points arise for determination. To which finding is given for the following reasons.

S.N.	Points	Findings
1.	Whether applicants are entitled for the stay as claimed ?	No
2.	What order ?	As per final order

REASONS

As to Point No.1 & 2 :-

6. Heard Ld. Adv. Shri. N. D. Shinde, for applicants and Ld. Adv. Shri. S. R. Pawar, for opponents. They have argued total contentions from the application and say respectively. It seems to be admitted and not disputed fact that opponents filed R.C.S.No.49/1999 before the Ld.C.J.J.D.,Mangalwedha for partition and accordingly the Court granted half share to them. Thereafter, deceased Shivaji filed R.C.A.No.21/2011 before the

District Court, Pandharpur challenging the judgment and decree of the Ld. Trial Court against the opponents, but said matter also disposed of by the District Court on 22.07.2016. After that C.M.A.No.55/2018 filed by the applicants which is delay condonation application to restore the appeal No.21/2011. In said matter also he remained absent. Hence, the Court disposed of said application by order dated 24.06.2022 and thereafter this application is filed by the applicants on 13.01.2023 before this Court for delay condonation in filing restoration application No.55/2018.

7. On going through the record it is apparently seen that the battle was started between the parties in the year 1999 when R.C.S.No.49/1999 was filed i.e. from since before about 23 years. Now this is a delay application to restore the application for condonation of delay to file an appeal against judgment and decree of Ld.C.J.J.D.,Mangalwedha. The applicant further was served with the summons of the suit, but has not filed W.S. in said matter and accordingly there is judgment and decree. Thereafter, appeal No.21/2011 was filed before the District Court, Pandharpur and said was also dismissed by the Court for not taking steps. Thereafter, delay condonation application No.55/2018 was filed to restore the appeal after 20 months and said application was also dismissed on 24.06.2022. From the matter itself it seems that since beginning the deceased Shivaji was fond using delaying tactics in prolonging the matter but each

time the matter was gone against him. After the decision of the matter itself in the year 2016 Darkhast was filed by the opponents and deceased Shivaji was having knowledge about said pendency of the darkhast application. If Shivaji was diligent he might have contest the appeal on merits and for getting set aside the judgment and decree of the Ld. C.J.J.D.,Mangalwedha. But he has not did so, but only find prolonging the appeal and the delay condonation application which was pending before the District Court, Pandharpur. The deceased Shivaji was only find using the different provision under law to delay the matter. Now this application is for condonation of delay to restore the C.M.A.No.55/2018 and in such matter without provision the court cannot grant stay to the decree. If again the decree stayed the opponents will not get the fruits of the same and so considering the facts and circumstances and reality in the matter discussed supra, I hold that the applicants are not entitled for the stay as claimed. Hence, I replied point No.1 in the negative and lastly proceed to pass the following order.

: ORDER :

1. Application is rejected.
2. No order as to costs.

Date : 15-04-2023

(B.B.Toshniwal),
Ad-hoc District Judge-1, Pandharpur

C E R T I F I C A T E

I affirm that the contents of this PDF file Judgment/Order is same word to word as per the original Judgment/Order.

- (a) Name of the Stenographer : S.R.Kore, Stenographer (G-1)
- (b) Court : Ad-hoc DJ-1 & ASJ, Pandharpur
- (c) Order signed by P.O. on : 15/04/2023
- (d) Order uploaded on : 15/04/2023