

MHJN010024212022



Order Below Exh.1

IN

Civil M.A. No.65/2022

[Ashok Barde & Anr. V/s. Shalikrao Barde & oths.]

Applicant Ashok Bala Barde and Kundlik Bala Barde have filed the application for condonation of delay against respondent no.1 Shalikrao Bala Barde, Shenphadabai w/o. Fakira Barde, Sanjay Fakira Barde, Fakirba Laxman Barde. The respondent no.2 to 4 are original defendant no.3 to 5, they are formal parties to the application as suit claimed against them is dismissed. According to the applicant, he wants to challenge the judgment and decree dated 24/10/2016 passed in RCS No.150/2012 by Jt. C.J.J.D., Bhokardan. It is submitted that the RCS No.150/2012 was in respect of possession of encroachment of land to the extent of 7 R from Gat no.178 as well as possession over portion of 29 R from Gat no.47. It is submitted that as there are two distinct reliefs claimed by the original plaintiff based on different cause of action in one suit. The trial Court has dismissed the claim with regard to Gat no.47 and partly allowed the suit with regard to the encroachment over Gat no.178. According to the present applicants they could not understand the order passed by the trial Court. It is submitted

that the present applicant has appeared in the appeal preferred against the said judgment and decree before the District Court, Jalna. But the applicants were not having knowledge of the fact that the original suit has been partly allowed in respect of Gat no.178. Further it is submitted that the because of the pandemic situation and also because of the death of the Advocate of the applicants, they did not have collected information with regard to the part decree. The applicants further submitted that they got knowledge about the execution petition filed before the CJJD, Bhokardan by respondent no.1 and that the respondent is trying to execute the said decree. It is submitted that the decree is executed. The applicants, possession over the suit property will be lost and it will cause hardship to the applicants. Hence, it is prayed that the delay of 5 years and 10 months be condoned and the appeal be allowed.

2. Respondent no.1 has appeared *suo-moto* and filed say vide Exh.11. The respondent no.1 has submitted that against the part decree he has preferred appeal bearing RCA No.192/2016 in which the present applicants have appeared. So also when the respondent no.1 has filed execution proceeding for the part decree bearing R.D. No. 09/2021, the present applicants have appeared in the said execution proceeding, as well. When the executing Court was about to pass necessary orders in the proceeding, the present application for delay condonation is filed by the applicants in order to protract the

execution proceeding. It is also submitted that the applicants have not come before the Court with clean hands. The day to day delay for preferring the appeal is not explained by the applicants. Hence, it is prayed that the application be rejected.

3. Heard, learned Advocate for both the sides and perused the record.

4. It is admitted position that the trial Court has partly decreed the suit. It is also admitted position that the respondent no.1 has preferred the appeal bearing RCA No.192/2016 against the impugned judgment and decree dated 24/10/2016 in RCS No.150/2012 and the present applicants have appeared in the said appeal. It is also admitted position that the respondent no.1 has preferred the R.D.No.09/2021 before the trial Court and the present applicants have appeared in the said execution proceeding. Perusal of the record reveals the present delay condonation application is filed by the applicant on 22/08/2022. It is also admitted position that except for the contention of the applicants that they did not have knowledge about the part decree in favour of the respondent no.1, there is no plausible explanation given for the condonation of delay of 5 years 10 months. It is admitted position that the present applicants have appeared in the R.C.A. No.192/2016 recovered by respondent no.1 against them. So, also the present applicants have appeared in R.D.No.09/2021 filed by respondent no.1

against the present applicant for execution of the part decree dated 24/10/2016 in R.C.S.No.150/2012.

5. The learned Advocate for the respondent no.1 has rightly submitted that the applicants have failed to explain the day to day delay. He has also rightly pointed out that the pandemic situation arose in the year 2020. Even though said period of two years is excluded, there is admitted delay of 5 years 10 months which is unexplained by the applicants. It is apparent from the record that the present applicants are real brother of respondent no.1 who have failed to duly pursue and protect their interest. It is well settled legal position that the ignorance of law is no excuse. The applicants could have referred cross-objection in the RCA No.192/2016. But they have failed to do so. They have also failed to prefer, cross appeal within the limitation though they have appeared in the R.C.A.No.192/2016. From the overall conduct to the applicants, it appears that there were absolutely aware of appeal, but they still failed to file cross-appeal. Considering the well settled legal position of condoning delay, in the interest of justice, I am passing the following order.

ORDER

- (1) The application for condonation of delay is allowed subject to cost of Rs.25,000/- (Twenty five thousand only) to be paid by the applicants to respondent

no.1, within seven days of this order, it be noted that no prayer for extension of time for compliance of this direction would be entertained.

- (2) If the applicants deposit the amount of Rs.25,000/- within the stipulated time, appeal enclosed herewith be register.

Date :- 07/02/2023.

(A.D.Deo)
District Judge-1
Jalna.