

ITEM NO.32

COURT NO.5

SECTION IX

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

Petition(s) for Special Leave to Appeal (Civil) No(s).18053/2012

(From the judgement and order dated 03/05/2012 in WP No.670/2011 of
The HIGH COURT OF BOMBAY)

DINKAR ANTU PATIL

Petitioner(s)

VERSUS

DATTATRAYA RAMCHANDRA SAMPKAL & ORS.

Respondent(s)

(With appln(s) for exemption from filing c/c of the impugned
Judgment and exemption from filing O.T. and with prayer for interim
relief)

Date: 06/07/2012

This Petition was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE G.S. SINGHVI

HON'BLE MR. JUSTICE SUDHANSU JYOTI MUKHOPADHAYA

For Petitioner(s)

Mr.Dilip Annasahabe Taur, Adv.

Mr. Anil Kumar,Adv.

For Respondent(s)

UPON hearing counsel the Court made the following
O R D E R

Feeling aggrieved by the order of Additional District
Judge, Karad who dismissed the application filed by him for
condonation of one year and eleven months' delay in filing an
appeal against ex-parte decree dated 10.11.2006 passed by Civil
Judge, Karad in Regular Civil Suit No.48/1996, the petitioner filed
a petition under Article 227 of the Constitution but could not
convince the learned Single Judge to interfere with the discretion
exercised by the learned Additional District Judge not to condone
the delay apparently because the learned Judge was conscious of the

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limited scope of the power vested in the High Court under Article
227 of the Constitution - Surya Dev Rai vs. Ram Chander Rai and
others (2003) 6 SCC 675 and Shalini Shyam Shetty and another vs.
Rajendra Shankar Patil (2010) 8 SCC 329.

We have heard learned counsel for the petitioner and
perused the record.

The learned Additional District Judge did advert to the

explanation given by the petitioner for delayed filing of the appeal but did not accept the same by making the following observations:

"It is important to note that Antu i.e. original defendant No.1 seems to have died in the year 1997 and the suit is decided in the year 2006. Moreover, after the death of Antu, notices were issued to these applicants in order to bring them on record as heirs of Antu. It is further important to note that defendant No. 2 was alive and he also did not take care of the suit after the death of Antu and even after service of notices, these applicants did not take care to approach their advocate and to give him information. It is also important to note that suit is of partition and in the same share of each party are decided. Plain reading of Sec. 5 of Limitation Act makes it very clear that delay of every day is expected to be explained by the parties but that seems to have not done in the present case. Moreover, in the above cited authorities principle laid down is that there has to be a definite and complete averments so as to constitute sufficient cause for condonation of delay. Moreover, delay cannot be condoned in routine manner and law of limitation is expected to be applied with all its rigor. Moreover, court is not expected to get influenced by merits of the case while considering such application and court is required to protect right of both parties and right of onus should not be permitted to be

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destroyed in unjustly or contrary to law. Moreover, contents of the application shows that applicants were not vigilant and it seems that delay is caused even after service of notice after the death of Antu Patil. Considering these facts and circumstances, and with most respect to the principles laid down in the above cited authorities, and when the Ld. Lower Court has rightly decided the share of all the parties, I did not find merit in the grounds made out by the applicants."

In our view, the reasons assigned by the learned Additional District Judge for declining to entertain the petitioner's prayer for condonation of delay were correct and the High Court did not commit any error by refusing to interfere with the order passed by him.

With the above observation, the special leave petition is dismissed.

(Satish K.Yadav)
Court Master

(Phoolan Wati Arora)
Court Master