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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

CIVIL APPLICATION NO.4334 OF 2016

IN

FIRST APPEAL (ST.) NO.15872 OF 2016

WITH

FIRST APPEAL (ST.) NO.15872 OF 2016

WITH

CIVIL APPLICATION NO.1860 OF 2017

1. Rahul Sambhu Kabade
Age: 41 years, Occ.: Service
Residing at Sharada Park,
S. N. 250/1/5, D. P. Road,
Baner, Pune – 41100.

2. Sambhu Umaji Kabade
Age: Adult, Occ.: Retired,
Residing at Sharada Park,
S. N. 250/1/5, D. P. Road,
Baner, Pune – 41100.

....Applicant/Appellant

Versus

1. Subhashsingh Surajsingh Thakur
Age 55 years, Occ. : Legal Practitioner

2. Sau Vasudha Subhashsingh Thakur
Age 51 years, Occ. : Teacher

3. Vikramsingh Subhashsingh Thakur
Age 24 years, Occ. : Service

All R/o Nos. 1 to 3 Ranpise Nagar,
Near Jagruti Vidyalay, Akola,
Taluka & District Akola

....Respondents

Mr. Nikhil Adkine a/w Mr. Swaroop Godbole for the applicant/appellant.

Mr. J.K. Shah a/w Ms. Namrata Thakur i/by R J Law for respondent nos.1
to 3.

CORAM : JITENDRA JAIN, J.

DATED : 19th January 2026

Judgment : -

1. Civil Application No.4334 of 2016 is taken out by the applicant/ appellants seeking condonation of delay of 203 days (in the application, the delay is mentioned as 176 days). The learned counsel for the applicant/ appellants to amend the prayer clause forthwith mentioning 203 days. If the prayer clause is not amended forthwith, the application will be dismissed on this ground itself.

2. The reason for the delay of 203 days is mentioned in paragraphs 3 to 16 of the application. Briefly, the reason states that the advocate who was engaged to handle the matter did not attend the matter nor the said advocate responded to various calls made by the applicant. The applicant states that on enquiry with few friends, he came to know from the website of the District Court that the suit is already decided. Thereafter, the applicant approached the advocate who advised him to file a review and on being informed that the review is not maintainable, it was decided to file an appeal to the High Court. The applicants lost trust in the advocate and, therefore, filed the appeal through another advocate. In the civil application allegations are made against the advocate to justify the delay.

3. Learned counsel for the applicant relies upon the decision of this Court in the case of *Gautam Dham Co-operative Housing Society Limited Vs. Funds and Properties of Parsi Panchayat & Ors.*¹ in support of his prayer seeking condonation.

4. Mr. Shah, learned counsel for respondent nos.1 to 3 states, by

1 2025 SCC OnLine Bom 3326

pointing out the roznama, that on 20 July 2015 and 29 July 2015, the defendant was present along with his advocate in the Court and since the Presiding Officer was on leave, the matter was adjourned. The roznama specifically states that the matter was adjourned for final arguments. In the roznama, the next date of 6 August 2015 is also mentioned.

5. On 6 August 2015 and 11 August 2015, the plaintiff, the defendant and their advocates remained absent and, therefore, the matter was fixed on 20 August 2015 for final hearing. On 20 August 2015, the defendant remained absent but the plaintiff and his advocate were present and argued the suit and filed notes of arguments. On 20 August 2015, the judgment was pronounced in open Court and the proceedings were closed.

6. The learned counsel for the respondents, therefore, submits that the reason given in the application cannot be accepted. He further submits that no disciplinary or any other proceedings are initiated against the advocate who according to the applicant is responsible. He further submits that there are allegations made against the advocate without making him a party in the proceedings. He, therefore, submitted that the civil application for condonation of delay be dismissed with costs.

7. I have heard the learned counsel for the applicant and the respondent.

8. The roznama of 20 July 2015 and 29 July 2015 categorically states that the applicant-defendant was present in the Court along with his advocate. On 29 July 2015, the matter was adjourned to 6 August 2015.

9. In the civil application, there is nothing mentioned as to what steps the defendant took to enquire about 6 August 2015 hearing. There is a general statement that the applicant kept on trying to contact the advocate

and the advocate was not responding. There is nothing placed on record in support of this submission.

10. The copies of the WhatsApp chats which is annexed to the civil application is of February and March 2016 which deals with review. I failed to understand that if the applicant has annexed WhatsApp chats from February 2016 then what prevented him to annex the WhatsApp chats, if any, from 6 August 2015 and if no WhatsApp message was sent why it was not sent when subsequently he has sent messages on WhatsApp. There is nothing on record to show that from 6 August 2015, the applicant made calls to the advocate except bald statement. The applicant could have annexed the call data record from 6 August 2015 in support of the submissions made in the civil application. However, nothing has been filed.

11. It has become regular practice to make allegations against the advocate in such matters of delay without making advocate a party and without taking any action against the advocate. If according to the litigants, the advocate is responsible for the mess created then appropriate proceedings should have been taken or atleast he should be made a party. On a specific query raised by the Court, the learned advocate fairly states that no proceedings are initiated against the advocate. On one hand, in the civil application, the applicant blames the advocate and on the other hand, does not take any proceedings against the advocate but makes allegations in the civil application without making him a party. Therefore, based on the records placed before me, the reasons given of attributing negligence on the part of the advocate cannot be accepted moreso without hearing the advocate and without there being any material in support of whatever is stated in the application. Acceptance of reasons would amount to accepting negligence of the advocate without any material and without hearing the

advocate.

12. The learned advocate for the appellant has relied upon the decision of this Court in the case of ***Gautam Dham Co-operative Housing Society Ltd. (supra)***. In that case, the allegations which are made in this application were not made. The delay in the case of ***Gautam Dham Co-operative Housing Society Ltd. (supra)*** was of 75 days which was on account of the office employees of the advocate who failed to bring to the notice of the advocate the service of summons which led to delay in filing the written statement. The facts in the case of ***Gautam Dham Co-operative Housing Society (supra)*** are materially different than the facts mentioned herein. In ***Gautam Dham Co-operative Housing Society (supra)*** no such allegation was made against the advocate which is made in the present application. Furthermore, in the present application as stated above, there is no material in support of the statements made in the application. The advocate in ***Gautam Dham Co-operative Housing Society (supra)*** case appeared before this Court and accepted the mistake.

13. The Hon'ble Supreme Court in the case of ***Rajneesh Kumar and Anr. versus Ved Prakash²*** has commented upon the practice of blaming an advocate. Paragraph 10 of the said order reads as under :-

“10. It appears that the entire blame has been thrown on the head of the advocate who was appearing for the petitioners in the trial court. We have noticed over a period of time a tendency on the part of the litigants to blame their lawyers of negligence and carelessness in attending the proceedings before the court. Even if we assume for a moment that the concerned lawyer was careless or negligent, this, by itself, cannot be a ground to condone long and inordinate delay as the litigant owes a duty to be vigilant of his own rights and is expected to be equally vigilant about the judicial proceedings pending in the court initiated at his instance. The litigant, therefore, should not be permitted to throw the entire

blame on the head of the advocate and thereby disown him at any time and seek relief.”

14. In the application it is also stated that applicant no.1 had to take a job abroad because of Information Technology. However, there is nothing on record annexed to the civil application to support the same.

15. In view of above, no “sufficient cause” is shown for condoning the delay in filing the first appeal.

16. Civil Application No.4334 of 2016 is dismissed. Consequently, the appeal and Civil Application No.1860 of 2017 also stands dismissed.

17. Learned counsel for the applicant states that the interim relief granted should continue for some time to approach the Hon’ble Supreme Court. The appeal was filed on 10 June 2016. The first order of 9 March 2020 protected the appellant from dispossession till 16 March 2020. Thereafter, there has been no continuation of the protection order till 2026. Therefore, the prayer made for continuing with the protection order is rejected since there was no stay after 16 March 2020. Even if pandemic period is considered, admittedly, there is no stay February 2022 till 2026. The request for continuing with the protection order or for stay of the impugned order is rejected.

(JITENDRA JAIN, J.)