

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

CIVIL APPLICATION NO.3792 OF 2014
IN
SECOND APPEAL STAMP NO.9582 OF 2014

MANJULABAI RAOSAHEB DESHMUKH, APPLICANT
THROUGH
GENERAL POWER OF ATTORNEY

VERSUS

LAXMAN TULSHIRAM DERE, DIED, RESPONDENTS
THROUGH LR'S AND OTHERS

Mr.S.V.Deshmukh, Advocate for the applicant.
Mr.V.Y.Bhide, Advocate for respondent Nos. 1B and 2.

(CORAM : RAVINDRA V. GHUGE, J.)

DATE : 01/04/2015

PER COURT :

1. The applicant is a lady who is about 78 years old. She has preferred this application for seeking condonation of delay of 4375 days (About 12 years and 6 months) in filing of the second appeal. Reasons in support of the prayer for condonation of delay are that she is an old lady, illiterate, did not have knowledge about preferring a second appeal and nobody advised her to file the second appeal. Besides these reasons, the applicant has not put forth any other ground.

2. Mr.Bhide, learned Advocate appearing on behalf of the respondents submits that the applicant has not divulged the entire events in between passing of the impugned decree in Reg. Civil Appeal No.26/2000 and filing of this application.

3. The respondents have already put the decree for execution in RD No.16/2003. The applicant has appeared in the execution proceedings by engaging an Advocate. Objection application to the maintainability of the execution proceedings on the ground that the decree is not executable, has been filed by her and the same has already been rejected by the Execution Court.

4. She approached the High Court by filing Writ Petition No.7641/2006, which was dismissed on 10/07/2009. Relevant observations are set out in paragraph No.3 of the said order, which read as under :

“It is pertinent to note that the petitioner did not obtain verification certificate as required u/O 21 Rule 2 of the CPC so as to determine legality and validity of the adjustment during pendency of the execution. Secondly, it is a joint decree passed in favour of the deceased Respondent No.1 Laxman and the Respondent No.2 and therefore, any one of them would have right to execute the same The decree is indivisible. If undivided

share of the deceased Respondent No.1 Laxman is purchased by the petitioner then remedy of such a purchaser, who is third party in relation to the joint family members, is to get the share determined by way of suit for partition and separate possession. The petitioner was original defendant and is party to the decree. She being judgment debtor, has not right to resist execution of the decree inasmuch as she can not be termed as third party within the meaning of Order XXI Rule 97 of the CPC. Considering these aspects, there is hardly any merit in the petition and, therefore, the same is dismissed. No costs."

5. Mr.Bhide, therefore, submits that this application suffers on account of suppression of facts and the reasons assigned are unacceptable.

6. The applicant has relied upon the judgment of the Apex Court in the case of Collector, Land Acquisition, Anantnag Versus Mst. Katiji, AIR 1987 SC 1353. It is canvassed that delay must be condoned liberally.

7. I am unable to accept the contentions of the applicant. The reasons set out are neither justifiable nor acceptable. The facts of this case are that the applicant has been consistently represented by an Advocate, she has litigated against the decree even in execution

proceedings and after this Court has dismissed her writ petition, this second appeal is preferred.

8. In this backdrop, the reasons cited can only be termed as an act of pretence on the part of the applicant. Delay of 12 years and 6 months cannot be condoned in the case of a litigant who has suppressed material facts and has made a false statement.

9. In the light of the above, this application is rejected.

(RAVINDRA V. GHUGE, J.)