

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

**Civil Application No.7154 of 2009
In
Second Appeal No. 11665 of 2009**

Salar Mohammad Shaikh. **.. Applicant.**

Versus

Balaji Vasantryao Suryawanshi
and Another. **.. Respondents.**

Shri. M.L. Dharashive, Advocate, for applicant.

**CORAM: T.V. NALAWADE, J.
DATE : 30th October 2015**

ORDER:

1) The application is filed for condonation of delay of 06 days caused in filing second appeal. As per record notice of respondent No.1 is served and one learned counsel filed appearance for respondent No.1. Respondent No.2 unserved as he refused to accept the notice. In view of this circumstance, the matter proceed against respondent No.1 and matter stands dismissed as against respondent No.2. Heard the learned counsel for the applicant. In view of the submissions made the application is allowed. Delay is condoned. List the matter for admission purpose on 02/12/2015.

(T.V. NALAWADE, J.)

mnp

Wednesday, 2 September 2015 (T.V.Nalawade, J.) Mr. Medewar

902 & 903 - Notice to respondent Nos.1 and 2 in both the proceedings. Learned counsel for respondent Nos.1 and 2 waives the notice. Stand over to 8th September 2015.

904 - Notice to respondents made returnable on 6th October 2015. Learned counsel for the appellant has produced copy of private paper book. It is taken on record. Call record and proceedings from the trial Court as well as paper book from the first appellate Court.

905 - Notice both in second appeal and civil application, made returnable on 5th October 2015. Call record and proceedings from the trial Court as well as paper book from the first appellate Court.

906 - The application is filed for transfer of Hindu Marriage Petition No.176/___ presently pending in the Court of the Civil Judge, Senior Division, Kopargaon, District Ahmednagar. The wife has prayed for transfer of the matter on the ground of convenience. Respondent husband is duly served but he has not turned up.

The proceeding is filed by the husband for relief of divorce. It is the case of the applicant wife that she is residing in Indira Nagar Pandharpur, Aurangabad. It is her case that she has no source of income and she will be required to take some male attendant to Kopargaon for contesting the matter filed for divorce against her. It is her

case that she has no resources, she will not be in a position to contest the matter effectively by going to Kopargaon and she has sprayed for transfer of the matter to the Court of the Civil Judge Senior Division Aurangabad.

In view of the aforesaid circumstances this Court holds that the proceedings need to be transferred.

In the result, the application is allowed. The HMP No. ____ presently pending in the Court of the Civil Judge Senior Division Kopargaon is withdrawn from that Court and is transferred to the Court of the Civil Judge, Senior Division, Aurangabad. The new Court is to see that notice is given to the husband before starting hearing of the matter or before passing any order as the husband has not turned up in the present proceeding.

907. The application is filed for transfer of HMP No.296 of ____ - which is presently pending in the Court of the Civil Judge Senior Division Kalyan, District Thane on the ground of convenience of the wife. Both sides are heard.

It appears that the wife has filed proceeding for restitution of conjugal rights in the Court of the Civil Judge Senior Division Bhusawal. She has filed another proceeding under the provisions of the D.V. Act in the Court from Bhusawal. It is her case she has no source of income and she will be required to take some male attendant to the Court from Kalyan where the divorce proceeding is filed against her and she has no resources she will not be able to contest the matter filed for divorce effectively.

It appears that the husband is in service. In any way he will be required to take leave for attending the divorce matter and also for attending the matters filed against him at Bhusawal. All the three matters can be kept at one station and that way take care of convenience of both the sides. In view of these circumstances this Court holds that the application needs to be allowed.

In the result, the application is allowed. HMP No.

presently pending in the Court of the Civil Judge Senior Division Kalyan is withdrawn from that Court and it is transferred to the Court of Civil Judge Senior Division Bhusawal. The new Court is to see that date of this matter is fixed after considering convenience of the husband and same date is given as _____ in other matters filed by the wife against the husband. The parties are to appear before the new Court on 25th September 2015.

908 - Notice, made returnable on 25th September 2015. Additional notice by registered post with acknowledgment due. Hamdust allowed in respect of RPAD notice.

910 - Call record and proceedings from the trial Court and the Appellate Court and also the paper book. List the matter for admission on 30th September 2015. Till then parties to maintain status-quo.

912 - Call record and proceedings from the trial Court and also copy of paper book from the First Appellate Court. List the matter for admission on 14th September 2015.

913 - Learned counsel for the applicant seeks time. Other side has objection as there is stay granted by this Court which *ex-parte*. By way of last chance stand over to 9th September 2015. If the matter is not argued the stay will be vacated and the matter will be dismissed.

919 - Both the sides are present. They submit that the parties have settled the dispute and they want to file compromise pursis. Stand over to 7th September 2015.

920 - Learned counsel for the applicant is absent. If nobody turns up on the next date the matter will be dismissed. Stand over to 22nd September 2015.

921 - Both sides are absent. If nobody turns up for the appellant on the next date, the matter will be dismissed. Stand over to 25th September 2015.

922 - Nobody present for the appellant. If nobody turns

up for the appellant on the next date, the matter will be dismissed. Stand over to 25th September 2015.

923 - The application is filed for fixing early date of final hearing of the second appeal. Both the sides are present. As per convenience of both the sides date is fixed as 10th September 2015. The civil application is disposed of. Learned counsel for the respondent submits that private paper book is ready. Even it is the responsibility of the appellant to produce copy of paper book. As the matter is very old it needs to be heard as early as possible. In view of this, on 10th September 2015 the matter needs to be argued by the learned counsel for the appellant.

924 - Learned counsel for the appellant submits that learned Senior Counsel will argue the matter. He requests for time. Stand over to 23rd September 2015. This date is given as per his convenience.

926 - Learned counsel for the respondent submits that he has just received copy of civil application. He wants time. Stand over to 21st September 2015.

927 - Notice to proposed legal representatives of respondent No.2, made returnable on 16th October 2015.

928 - Both the sides are present. Learned counsel for respondent wants time as he wants to file reply. Stand over to 7th October 2015.

929 - Both the civil applications are filed for recording compromise which the parties have arrived at outside of the Court. They want compromise decree in respect of one suit property viz. Property bearing Gat no.187 of village Supa Tahsil Parner, District Ahmednagar. The suit was also filed in respect of other property but they have not compromised the dispute in respect of other property.

The parties are identified by their respective counsel and submission was made that both the parties and legal representatives of some parties have signed on the compromise document. It appears that through general

power of attorney some parties have signed the compromise document. As the learned counsels for the parties have identified the parties to the compromise and they have requested for modifying the decree given in respect of the aforesaid property in terms of compromise. The application is allowed. The decree given by the Courts below is to be modified in terms of the present compromise in respect of only aforesaid property. The applications are allowed and disposed of in terms of aforesaid terms. The appeals are to continue in respect of other property.

930 - Both the sides are present. As per their convenience the date is fixed as 23rd September 2015.

931 - Time is extended to 5th October 2015.

932 - Both the civil applications were kept on yesterday for fixing early date of final hearing of the second appeals. Learned counsel for the applicant makes statement that he had contacted learned counsel of other side and he had informed him that the matter is kept today. But nobody has turned up. In view of these circumstances, the applications are allowed. Date is fixed for final hearing of both the appeals as 25th September 2015. Civil applications are disposed of.

933 - The application is filed for adding of three persons as party respondents in the proceedings. It is contended that they have purchased the disputed property and so they need to be added. Copies of sale deeds are filed.

The application allowed The proposed parties are to be mad party as respondent nos.6 to 8. Amendment to be !! br0ken!! Notice to the address respondents made returnable on 1-10-2015. Hamdust allowed.

934 - The application is filed for condonation of delay of 139 days caused in filing application for restoration and for setting aside the order of the learned Registrar (Judicial).

In view of the content of the application and the submissions made the application is allowed. Delay is condoned. The order of the learned Registrar (Judicial) is hereby set aside and the matter is restored to its original number. The learned counsel for the applicant to remove office objections prior to 16th September 2015. If the objections are not removed the entire matter shall stand dismissed automatically without back reference to Court.

935 - The first application is filed for condonation of delay of 712 days caused in bringing legal representatives of ___ on the record and the second application is filed for condonation of delay of 89 ___ days caused in bringing legal representatives of respondent No.2 on the record. Permission is sought to bring the legal representatives on the record. Learned counsel ___ is representing the proposed legal representatives. Heard both the sides.

It appears that there was no information about the death and only after report of the serving officer about ___ that shows two respondents are dead. In view of these circumstances and the submissions made this Court holds that the application deserves to be allowed. In the result, the applications are allowed. Delay is condoned. Permission is granted to bring the proposed legal representatives on the record in the appeal. Amendment to be carried out immediately in the appeal. Notice of the main matter to the legal representatives. It is waived by learned counsel.

936 - Learned counsel for the respondent submits that the applicants who want to prosecute the matter are not the legal representatives of the original appellant and the legal representatives have no information about the order. He seeks time. Stand over to 21st September 2015.

937 - The application is filed for permission to bring legal representatives of appellant No.1 on the record. Nobody present for the respondent. Learned counsel for the applicant made statement that by order dated 23-9-2013 application which was filed for condonation of delay

for bringing legal representatives of appellant No.1 is already allowed.

In view of this circumstance, the present application is allowed. Abatement of the appeal in respect of appellant No.1 is hereby set aside. Permission is granted to bring legal representatives of appellant No.1 on the record. Amendment is to be carried out immediately.

939 - The application is filed for setting aside of the abatement of the appeal in respect of respondent No.2 and also for permission to bring the legal representatives of respondent No.2 on the record. The proposed legal representatives are represented by learned counsel Shri. Mustafa. Heard both the sides.

In view of the contents of the application and the submissions made, the application is allowed. Delay is condoned. Abatement in respect of respondent No.2 is hereby set aside. Permission is granted to bring the legal representatives of deceased respondent No.2 on the record. Amendment in the appeal memo is to be carried out immediately. Notice to the legal representatives of respondent No.2 in appeal. It is waived by the learned counsel.

940 - Learned counsel for the respondent is present. Nobody present for the applicant. If nobody turns up for the applicant on the next date the matter will be dismissed. Stand over to 14th September 2015.

941 - The application is filed for condonation of delay of ___ days caused in filing application to bring legal representatives of deceased respondent No.1-C on record. Notice on the proposed legal representatives was served but nobody has turned up. In view of the contents of the application and the submissions made the application is allowed. Delay is condoned. Permission is granted to bring the legal representatives on the record in the appeal. Amendment is to be carried out immediately. Notice in appeal to these legal representatives of respondent No.1-C made returnable on 6th October 2015.

942 - The first application is filed for condonation of delay of ____ days caused in bringing legal representatives of deceased respondent No.7 on the record and for setting aside of the abatement and for bringing legal representatives on the record. The second application is filed for condonation of delay of 2060 days caused in filing application to bring legal representatives of respondent No.6-C on the record and for setting abatement etc. The first proceeding learned counsel ____ is representing the proposed legal representatives and he has strongly opposed the application by contending that the appellant is relative of the deceased respondent slept over the matter He did not inform the Advocate and steps are not taken in time so delay cannot be condoned. In the second proceeding nobody has tuned up though the proposed legal representatives are served with the notice of the proceeding.

The suit was filed for partition. In view of the nature of dispute the cause of action still survives. In view of these circumstances and originally in appeal proceedings litigants do not remain in contact with the counsel, this Court holds that delay deserves to be condoned in both the matters.

Both the applications are allowed. Delay is condoned. Abatement in respect of deceased respondent is hereby set aside. Permission is granted to bring the legal representatives on the record. Learned counsel ____ waives notice for legal representatives of respondent NO.3. Amendment is to be carried out immediately in respect of these respondents in appeal memo. Notice to the legal representatives in the appeal made returnable on 5th October 2015.

943 - The application is filed for setting aside the order of dismissal by this Court (other Hon'ble Judge) and for restoration of the appeal. Learned counsel for the applicant has taken blame to himself. In view of the contents of the application and the submissions made by both the sides, the application is allowed. The order of dismissal dated 9-2-____ is hereby set aside and the appeal is restored to its original number. List the second appeal for admission purpose on 1st October 2015. Call record

and proceeding from the trial Court so also copy of paper book from the first appellate Court.

944 - Learned counsel for the applicant seeks time. The record shows that ____ but steps are not taken. If steps are not taken before 21st September 2015 further orders will be made regarding abatement of the appeal itself. Stand over to 21st September 2015.

945 - Nobody present for the applicant. If nobody turns up for the applicant further order of dismissal will be passed. Stand over to 22nd September 2015.

946 - Nobody is present for the applicant. No interest is shown in the proceeding filed for review. The proceeding stands dismissed for default.

947 - The learned counsel for the applicant seeks time. This proceeding is for review of the order made in 1999. If the matter is not argued on 9th September 2015, it will be dismissed. Stand over to 9th September 2015.

948 - In view of the office note learned counsel Shri. Shah holding for for learned counsel Barade requests for time. Stand over to 21st September 2015.

949 - Learned counsel Shri. S.B. Bhapkar for the respondent is present. He submits that suit for possession is decreed in his favour long back but the proceeding is not making progress since long. If nobody turns up for the appellant on the next date the matter will be dismissed. List the matter for admission purpose on 16th September 2015.

950 - Purshis is filed that though respondent No. __ - is dead his legal representatives who are respondent Nos. ____ are already on the record and so there is no need to file separate application to being legal representatives. The appellant can carry out amendment accordingly in the appeal memo.

951 - Seen the record. The record show that sole respondent has died long back prior to the year 2013 and

this Court had granted time by order dated 19-12-2013 to take necessary steps. But till today steps are not taken. As the sole respondent has died long back, the entire matter stands abated and disposed of. All the civil applications are disposed of.

952 - Learned counsel for the appellant submits that in the *purshis* correct new addresses of respondents Nos.2 and 4 are given. Office to issue notice on the new addressed, made returnable on 12th October 2015.

953 - The application is filed for vacating interim relief granted by this Court by which stay to the execution of the partition decree is granted by this Court. Seen the previous orders made by this Court dated 28-8-2015 and also 27-4-2015. Learned counsel holding for Advocate ___ is presenting. It was submitted by the learned counsel for the decree holder that the order made which was conditional is not complied with. When the judgment debtor was expected to deposit Rs.10,000/- per year he has not deposited anything and so the interim relief is liable to be vacated. These submissions are not rebutted. Nothing is produced to show that the amount was deposited and the order was complied with. In view of these circumstance, the application is allowed. Interim relief is vacated. List the second appeal for final hearing on 16th September 2015 as per convenience of the counsel for the appellant.

954 - Learned counsel for the applicant undertakes to supply spare copy prior to 11th September 2015. If the copies are supplied issue notice, made returnable on 16th October 2015.

955 - Learned counsel for the applicant submits that compromise talk is going on and there is one more matter pending before the Division bench and in that mater dated 16th November 2015 is given. He requests for giving longer date. Keep the matter on 30th November 2015.

957 - Nobody present for both the sides. If nobody turns up for the appellant on the next date the matter will be

dismissed. Stand over to 22nd September 2015.

1 - Learned counsel for the appellant to satisfy the Court as to how the suit filed for possession could have been treated as tenable in Civil Court when the subject matter was dealt with by the Tenancy Court. He is also to satisfy the Court as to how the relief of declaration of ownership could have been given when granting such relief will indirectly be setting aside the orders made by the tenancy court like granting certificate under section 38-E of the Hyderabad Agricultural Land and Tenancy Act. He is also advised to produce copies of orders made under the Tenancy Act by the Tenancy Court. Stand over to 7th September 2015.

3 - Heard learned counsel for the appellant. Notice in second appeal and the civil application, made returnable on 10th October 2015. Call record and proceedings from the trial Court and also from the appellate Court and copy of paper book.

In view of the share which is given in partition suit to the respondent / plaintiff, stay can be granted subject to deposit of Rs.60,000/- (Rs. Sixty thousand) by way of security by the appellant in the Court within six weeks from today.

5 - The learned counsel for the appellant is heard for the admission purpose. Other side seeks time. On his request stand over to 9th September 2015.

6 - Learned counsel for the appellant seeks time. Stand over to 11th September 2015.

7 - Notice. Learned counsel waives notice for respondent No.1 Notice to other respondents made returnable on 9th October 2015. Call record and proceedings from the trial Court and also copy of paper book from the first appellate Court.

8 - The application is filed for fixing early date of final

hearing of _____. Both sides are present. As per their convenience the date of hearing of MCA is fixed as 14th September 2015. The application is disposed of in those terms.

9 - Learned counsel for the applicant submits that the cost amount is already deposited though he is not having receipt. In view of this statement, list the second appeal for admission purpose on 21st September 2015.

10 - The application is filed for condonation of delay of ____ days caused in filing second appeal. In view of the contents of the application and the submission made, the application is allowed. Delay is condoned.

Notice in second appeal. It is waived by learned counsel for respondent Nos.1 to 4. Notice to respondent nos.6 to 11 . the proceeding needs to be dismissed as against respondent No.____. Notice to respondent Nos.6 to 11 made returnable on 7th October 2015. Call record and proceedings from the trial Court and copy of paper book from the first appellate Court.

13 - The application is filed for condonation of delay of 16 days caused in filing second appeal. Notice was served on the respondent Nos.1A, 1B, 1C, 2, 3A and 4. They have not turned up. In view of the contents of the application and the submissions made the delay is condoned. Matter is to be treated dismissed as against _____. Notice in appeal only as against aforesaid respondents made returnable on 15th October 2015. Call record and proceedings from the trial Court and also from the First Appellate Court with copy of paper book.

18 - Learned counsel for the applicant submits that he has no objection if the application is heard when the appeal itself is heard. Remove from the Board.

22 - Learned counsel for the applicant submits that in Civil Application No.8955 of 2010 he has submitted correct address of sole respondent and notice needs to be issued on that address. Office to trace out that proceeding and issue notice on that address, made returnable on 14th October 2015.

23 - Learned counsel for the applicant undertakes to supply detailed address of respondent No.2. If detail address is not supplied the matter shall stand dismissed automatically without back reference as against respondent No.2. Stand over to 22nd September 2015.

24 - Learned counsel for the applicant is advised to file civil application supported by affidavit before 21st September 2015 for issuing notice to respondent No.____ through paper publication. Notice to other respondents is made returnable after four weeks.

25 - Reissue notice to respondent No.1 in both the proceedings. It is made returnable on 15th October 2015.

26 - The learned counsel for the applicant submits she has no instructions. Something in that regard needs to be filed in writing. Stand over to 16th October 2015.

27 - Seen the office note. Steps are not taken to bring legal representatives of ____ on record. The appeal as against them stands dismissed as abated. List the second appeal for final hearing on 6th October 2015 as against respondent No.1.

28 - Seen the office note. It appears that legal representatives of respondent Nos.1 and 2 are not on record in time and steps are not taken. So the appeal is to be treated as dismissed as abated as against respondent Nos.1 and 2. List the matter for final hearing as against remaining respondents on 15th October 2015.

29 - Learned counsel for the applicants on instructions submits that his client has settled the matter and he wants to withdraw the proceeding. So the appeal the application are disposed of as withdrawn.

30 - Seen the office note. Steps are not taken since long for serving respondent No.2. So the matter stands dismissed as against respondent No.2. List the matter for admission purpose on 13-10-2015. Call record and proceedings from the trial Court and also from the Lower

appellate Court with paper book.

31 - Learned counsel for the appellant is present. In the first session learned counsel for the respondent had pressed for early hearing but he did not turn up. Stand over to 10th September 2015.

32 - Learned counsel for the appellant submits that he has information that respondent No.2 is dead. He submits that he is ready with the application but he wants time. He further submits that he will file reply to the civil application. Stand over to 21st September 2015.

Speaking to minutes During speaking to the minutes learned counsel for the applicant submits that due to mistake the cost amount is mentioned as Rs.10,000/-. It is submits that initial cost amount was Rs.500/- and the applicant was required to pay double the cost i.e. Rs.1,000/-. In the order the amount is mentioned as Rs.10,000/- in stead of Rs.1,000/-. Other side is present. It is true that such mistake is committed. The cost amount is Rs.1000/- (Rs. One thousand). The mistake is to be corrected accordingly. Motion stands disposed of.