

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

SECOND APPEAL NO.644 OF 2013
WITH
CIVIL APPLICATION NO. 9908 OF 2011

Sau. Manisha Shrinivas Pate,
Age: 38 years, Occu. Household,
R/o: Plot No. 23, Surana Nagar,
Jalna Raod, Aurangabad

...APPELLANT

VERSUS

1. Sau. Vimalbai W/o Suresh Kale,
Age: 42 years, Occu. Household,
R/o: Near Aiyappa Temple,
Beed By-pass Road,
New Satara, Aurangabad
2. Sau. Thaganabai Suresh Kale,
Through G. P. A. Suresh Rambhau Kale,
Age: Major, Occu. Agri.,
R/o: Near Aiyappa Temple,
Beed By-pass Road,
New Satara, Aurangabad
3. Mohan Rambhau Kale,
Age: 45 years, Occu. Agriculture,
R/o : Satara, Aurangabad
4. Dilip Vasantrao Pate (Wani),
Age: 36 years, Occu. Service,
R/o: Plot No. 52, Pranjali,
Niwara Co-operative Houseing Society,
Shridhar Nagar, Beside Bharati
Vidyapeeth, Dhanakwadi, Pune
5. Ganes Sawlaram Bachkar,
Age: Major, Occu. Agriculture,
R/o : Satara, Tal. & Dist. Aurangabad

...RESPONDENTS

Mr A. G. Magare, Advocate for appellant;
Mr D. K. Dagadkhair, Advocate for respondent No. 3;

CORAM : N.W. SAMBRE, J.

DATE : 10th June, 2015

ORAL ORDER :

The question of law that is sought to be canvassed by the appellant/original petitioner is, whether the Lower Appellate Court was right in rejecting the application for condonation of delay without going into the cause cited before it and decided only on consideration of the conduct of the present appellant during the pendency of the suit.

2. Learned Counsel appearing on behalf of the appellant would urge that an *ex parte* decree was subject-matter of appeal before the first appellate court, wherein there was a delay of five months in preferring the same. The application came to be rejected by observing that the appellant was negligent in prosecuting the suit. While doing so, the first appellate court has discussed the conduct of the appellant during the pendency of the suit. According to him, that could have been gone into by the first appellate court at the stage of hearing of the appeal on merit.

3. Per contra, learned Counsel appearing on behalf of respondent no.3, while opposing the above referred submissions, would urge that the present appellant was negligent while pursuing the suit, so also the first

appeal. According to him, no sufficient cause was cited before the first appellate court while seeking condonation of delay in filing the first appeal. In support of his contention, learned Counsel has relied upon the observations made by the learned 3rd Additional District Judge, Aurangabad in the order impugned so as to canvass the conduct of the present appellant.

4. Having perused the order impugned, it is noticed that the learned Additional District Judge, while dealing with the application for condonation of delay has proceeded to consider the conduct of the present appellant during the pendency of the suit. He has not referred to the cause cited by the present appellant in the application for condonation of delay. It is only by observing that the delay is not satisfactorily explained and without discussing the cause has rejected the application. In my opinion, the learned Additional District Judge has committed a grave error of law.

5. In the light of above, I pass following order :-

The order dated 14th July, 2006, passed by 3rd Additional District Judge, Aurangabad, in M.A.R.J.I. No.330 of 2004, is hereby set aside.

M.A.R.J.I. No.330 of 2004 for condonation of delay is allowed, subject to payment of costs of Rs.5,000/- by the present appellant to the respondents herein. The costs be paid before the learned District Court, within a period of four weeks from today. The payment of costs shall be condition precedent for restoration of the appeal before the District Judge.

Parties agree to appear before the District Judge, Aurangabad on 29th June, 2015.

Second Appeal stands allowed in above terms.

In view of disposal of the Second Appeal, Civil Application No.9908 of 2011 does not survive and stands disposed of.

(N.W. SAMBRE, J.)

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