

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

BENCH AT AURANGABAD

CIVIL REVISION APPLICATION NO. 262 OF 2013

SOJARBAI TANAJI BOYANE

VERSUS

SANJEEVANI MALKA @ MALLIKARJUN POTE AND OTHERS

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Advocate for Petitioner : Mr. Deshpande C. R.

Advocate for Respondents 1 and 4 : Mr. V. D. Gunale

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CORAM : S. V. GANGAPURWALA, J.

DATE : 19th August, 2015

PER COURT :

1. Mr. Deshande the learned counsel submits that the court, while allowing the application filed by the respondent for condonation of delay in filing of appeal has not considered the conduct of the present respondent. There was a delay of 2 years, 6 months and 16 days in filing the appeal. The respondent had participated in the proceedings, filed written statement and time to time, the advocate for the respondent filed application for seeking time, However the respondent did not appear in the suit subsequently and now the ground is raised that they were not communicated by their Advocate. Such a ground cannot be digested.

2. According to the learned counsel, the judgment is delivered by the trial court on 20th March, 2009 and application for certified copy was filed for the first time on 6th September, 2011. Once having filed the written statement, now the respondent cannot take plea that the decree is an ex-parte one.

3. Mr. Gunale, the learned counsel for respondents submits that the Court has considered the fact that respondents were not communicated of the pendency of the suit and various stages of the suit. There was communication gap between Advocate and the respondents.

4. I have considered the submissions canvassed by the learned counsel for the respective parties.

5. The order impugned is not setting aside an ex-parte decree but the order impugned is condoning the delay in filing the appeal against the judgment and decree passed by the trial Court. The order is passed on 14.06.2013 by the appellate court condoning the delay. The Court has taken liberal approach while condoning the delay. The suit is seeking substantive relief of declaration of ownership. The Court has observed that there was communication gap between Advocate and the applicants i.e. respondents.

6. The lower appellate court has exercised the discretion in a plausible manner. This Court would not entertain the civil revision application only on the ground that some other view is possible. In the light of that the civil revision application is allowed.

(S. V. GANGAPURWALA, J.)

JPC