

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

CIVIL APPLICATION NO.535 OF 2013 IN
SECOND APPEAL STAMP NO.31596 OF 2012

VIJAYABAI MADHUKAR INGOLE

APPLICANT

VERSUS

SHAKUNTALABAI NAMDEO INGOLE
AND OTHERS

RESPONDENTS

Mr.S.G.Bhalerao, Advocate for the applicant.

Mr.S.V.Natu, Advocate for respondent No.1.

Mr.V.V.Bhavthankar, Advocate for respondent No.2.

Mr.V.M.Chate, Advocate for respondent No.3.

(CORAM : RAVINDRA V. GHUGE, J.)

DATE : 18/03/2015

PER COURT :

1. By this application, the applicant who has retired as a Principal, seeks condonation of 1823 days delay in filing a second appeal for challenging the judgment and decree passed in the First Appeal dated 07/09/2007. The judgment of the Trial Court in RCS No.291/1993 is dated 19/08/1997.

2. Contention is that the applicant mistakenly approached the same Appeal Court by preferring Misc.C.Appeal No.11/2012 filed on 15/05/2012. Said M.C.A. was delayed by 4 years and 7 months. It is submitted that time was spent before the wrong forum and the

said M.C.A. was disposed of on 07/11/2012. The second appeal was lodged on 29/11/2012.

3. It is submitted that the issue is as regards a WAY and the said dispute has arisen on account of the non applicants using the WAY through the plot of the applicant. It is, therefore, submitted that both the impugned orders are required to be scrutinized in the second appeal.

4. Mr.Natu, Mr.Bhavthankar and Mr.Chate, learned Advocates appearing on behalf of the non-applicants submit that the path which is used as a WAY does not in any manner affect the plot of the applicant. The said path has been used and is in use since 1986. The judgment and decree delivered by the Trial Court on 19/08/1997 has been executed and the panchnama dated 12/11/2007 duly signed by the husband of the applicant indicates that the decree has already been executed.

5. Learned Advocate for the applicant submits that the applicant and her husband attempted to unload raw material on the plot. They were obstructed by the respondents and it is then that they realized that the Appeal Court had dismissed her appeal by judgment

dated 19/08/1997.

6. I have considered the circumstances narrated by the applicant in paragraph No.9 and 10 of the civil application. The said contentions are put forth as grounds for condonation of delay. I find that the applicant, who is an educated person and who retired as a Principal in 2009 had apparently neglected the court proceedings. There are no reasons set out to explain as regards the lack of knowledge of the Appellate Court having rejected the first appeal on 07/09/2007. Moreover, Misc.Civil Appeal No.11/2012 has been withdrawn by the applicant on 07/11/2012.

7. After preferring the second appeal in this Court, the civil application for condonation of delay was earlier dismissed in default.

8. I have also considered the submissions of the rival sides and I find that the decree has already been executed on 12/11/2007 which clearly falsifies the contention of the petitioner that she had no knowledge about the decree or the judgment of the Appeal Court dated 07/09/2007.

9. These circumstances are vocal and clearly establish that the

husband of the applicant on her behalf has signed the panchnama dated 12/11/2007 vide which the decree was executed. Yet, even after execution of the decree, the applicant had approached the District Judge-1 at Ambejogai by filing the Misc.Civil Appeal after 5 years of the execution of the decree.

10. In the light of the above, the reasons set out in the civil application for condonation of delay that the applicant had no knowledge about the rejection of her first appeal, apparently is a false statement.

11. As such, this civil application for condonation of delay is rejected.

(RAVINDRA V. GHUGE, J.)