

IN THE HIGH COURT OF JUDICATURE AT MUMBAI
CIVIL APPELLATE JURISDICTION
CIVIL APPLICATION NO.1309 OF 2014
IN
SECOND APPEAL (ST.) NO.5832 OF 2014

Sau. Chhabutai @ Saraswati Jagannath Sawant
through P/A. Holder Prabhakar J. Sawant ... Applicant
Vs.
Dashrath Bhaguji Kadam and others ... Respondents

Mr. Samarth Moray i/b. Mr. Vishwanath S. Talkute for Applicant.
Mr. C. N. Chavan for Respondents.

CORAM : R. G. KETKAR, J.
DATE : 20TH MARCH, 2015

P.C. :

Heard Mr. Moray, learned Counsel for applicant and Mr. Chavan, learned Counsel for respondents.

2. This is an application for condonation of delay of 1 year and 121 days in filing the application. Mr. Moray submitted that for the reasons stated in paragraphs 3 and 4 of the application, delay in filing the Second Appeal deserves to be condoned. On the other hand, Mr. Chavan invited my attention to paragraphs 5 to 9 of the affidavit-in-reply filed on behalf of respondents No.1 to 4 and submitted that applicant has not made out sufficient cause for condoning the delay.

3. In paragraph 3 of the application, the applicant has stated that she was not aware about the judgment and decree of the lower appellate Court. Her Advocate Mr. S. A. Taware had tried to commit suicide some time in the month of November 2012. In paragraph 4, she stated that initially, she was advised to file Review before the same Court. She is

extremely old and was also not keeping good health, therefore, she could not follow up with the Advocate. Applicant is extremely poor and therefore, she could not arrange funds for for filing Appeal before this Court. Perusal of the impugned orders shows that the applicant had instituted Suit for partition and separate possession. The trial Court decreed the Suit on 15.11.2011. The Appeal preferred by the respondents was allowed on 16.07.2012. It is against this decision, the applicant has instituted the present Second Appeal.

4. Having regard to the fact that the immovable property is involved in the Second Appeal as also for the reasons stated in paragraphs 3 and 4 of the application, I am satisfied that applicant has made out sufficient cause for condoning the delay. Mr. Chavan has taken me through paragraphs 5 to 9 of the reply filed by respondents No.1 to 4 to contend that no sufficient cause is made out. However, there is no effective denial to the assertions made in paragraphs 3 and 4 of the application.

5. In view thereof, I am satisfied that the applicant has made out case for condoning the delay. Hence, Civil Application is allowed in terms of prayer clause (a) with no order as to costs. Office is directed to register the Second Appeal, if it is otherwise ready.

(R. G. KETKAR, J.)