

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE SIDE JURISDICTION

CIVIL APPLICATION NO.1529/2015
IN
SECOND APPEAL (ST) NO.10177/2015

Smt. Karishma Khemraj Dandekar ...Applicant

V/s.

Smt. Vijaya Vishwanath Bhube & Ors. ...Respondents

Mr. S. M. Railkar for the Applicant.

CORAM: K.K. TATED, J.
DATED : OCTOBER 8, 2015

P.C. :

1. Heard the learned counsel for the Applicant. This Application is for condonation of 10 years and 164 days delay in filing the appeal challenging the decree dated 23/07/2004 passed by the Appellate Court in civil appeal No.80/1998.

2. The learned counsel for the Applicant submits that on or about 24/02/2014 the Respondent has filed an Application under section 149 of the Maharashtra Land Revenue Code, 1966 before the Talathi, Lanja praying therein for entering her name in the record of suit land i.e. Gat No.1383/B admeasuring 39 ares, assessed at 36 paise situate at village & Taluka Lanja, Dist. Ragiad. At that time, the Applicant learnt that the Respondent Plaintiff is taking some action pursuant to the

judgment and decree passed by the Trial Court on 25/06/1998. Hence, immediately the Applicant contacted their Advocate. At that time, the Applicants learnt that they have to file Second Appeal to protect their interest challenging the judgment and decree passed by the Appellate Court dated 23/07/2004 in civil appeal No.80/1998. Hence, the Applicant filed Application for certified copy of the judgment and decree passed by the Appellate Court on 28/11/2014 and same was ready for delivery and collected by the Applicant on 01/12/2014. Thereafter the Applicant filed present Second Appeal on 06/04/2015. The learned counsel for the Applicant submits that for want of knowledge about the judgment and decree passed by the Appellate Court dated 23/07/2004, there is delay on the part of the Applicant to file the Second Appeal. In support of this contention, the Applicant relies on paragraph 14 and 15 of the Civil Application which read thus:

“14. Applicant states that to her shock and surprise the Respondent No.1 on or about 24th February 2014 has filed an Application under section 149 of the Maharashtra Land Revenue Code, 1966 before the Talathi, Lanja praying therein for entering her name in the record of suit land i.e. Gat No.1383/B admeasuring 39 ares, assessed at 36 paise situate at village & Taluka Lanja, Dist. Raigad. A copy of the said Application is annexed hereto and marked **Exhibit-A**.

15. The Applicant states that on getting knowledge of the proceedings initiated by the Respondent No.1, the Applicant approached her Advocate in Lanja for the purpose of representing the Applicant in the proceedings initiated by the Respondent No.1. The Applicant states that her Advocate after going through the decrees of the civil courts advised the Applicant that it would be in the interest of the Applicant to challenge the judgment and decree dated 23/07/2004 passed by

the learned District Judge, Ratnagiri, partly allowing the appeal filed by the Respondent No.1. It is in these circumstances that the Applicant is approaching this Hon'ble Court by way of the abovementioned Second Appeal.”

3. The learned counsel for the Applicant submits that in the interest of justice, this Hon'ble Court be pleased to condone the delay in making the Civil Application challenging the judgment and decree dated 23/07/2004 passed in appeal No.80/1998. He submits that the Applicant already invested huge amount for construction of a hotel in the suit premises. He submits that hotel is the only source of income of the Applicant for her livelihood. He submits that in the interest of justice, this Hon'ble Court be pleased to condone the delay in preferring the Second Appeal and the matter be heard on merits. He further submits that if the delay is not condoned, irreparable loss, harm and injury will be caused to the Applicant.

4. Heard the learned counsel for the Applicant at length. It is to be noted that in the present proceedings the Appellate Court passed decreed on 23/07/2004. After 10 years, the Applicant filed Application for certified copy and same was collected on 01/12/2014. The reason given by the Applicant in paragraph 14 and 15 of the Civil Application is that they learnt about the judgment and decree passed by the Appellate Court only in the month of February 2014 when the Respondent made an Application under section 149 of the Maharashtra Land Revenue Code, 1966 before Talathi, Lanja for entering their name in the record of rights of the suit property. That cannot be a sufficient ground for condonation of delay.

5. It is to be noted that the Appellate Court passed the decree on 23/07/2004 after hearing both sides. Though the Applicant collected certified copy on 01/12/2014, the Second Appeal was filed on 06/04/2015. There is no explanation in the Civil Application as to why the Applicant took more than 4 months to file the Second Appeal from the date of obtaining certified copy of the judgment and decree passed by the Appellate Court.

6. This Court in the matter of **Laxman Divekar Vs. State of Maharashtra 1998 (1) Mh.L.J 745** held that Court has no power to arbitrarily condone the delay in the name of advancing substantial justice.

7. The Apex Court in the matter of **Damodar Pillai Vs. South Indian Bank Ltd, 2005(5) All.M.R. 961 (SC)** held that hardship or injustice is not a ground for extending the period of limitation.

8. The Apex Court in the matter of **Pundlik Jalam Patil Vs. Ex.Engg. Jalgaon Medium Project and Ors, 2008(6) BCR 513** held that unless and until sufficient cause is shown, inordinate delay should not be condoned.

9. The Apex Court in the matter of **Commissioner, Nagar Parishad, Bhilwara Vs. Labour Court, Bhilwara & Anr, 2009(3) SCC pg 525** held that while dismissing an Appeal on the ground of limitation, going into the merits of the case is not allowed.

10. The Apex Court in the matter of **Oriental Aroma Chemical Industries Limited Vs. Gujarat Industrial Development Corporation reported in 2010 (5) SCC 459**, held that in the absence of sufficient cause, Court should not condone the delay.

11. The Apex Court in the case of **B. Madhuri Gaud Vs. B. Damodar Reddy, 2012 (12) SCC 693** held that if sufficient cause is not shown, delay should not be condoned.

12. The Apex Court in the matter of Esha Bhattacharajee Vs. Managing Committee of **Raghunathpur Nafar Academy 2013(12) S.C 450** held that if sufficient cause is not shown, application for condonation of delay needs to be rejected.

13. Considering the submission made by the learned counsel for the Applicant and the reasons disclosed in paragraph 14 and 15 of the Civil Application and the law laid down by the Apex Court, I am of the opinion that the Applicant has failed to make out sufficient cause for condonation of inordinate delay of more than 10 years.

14. Hence, the Civil Application stands dismissed.

15. In view thereof, the registration of the Second Appeal stands rejected.

(K.K. TATED, J.)