IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

rpa

CIVIL APPLICATION NO. 1396 OF 2010
IN
SECOND APPEAL (ST.) NO.22039 OF 2010

Smt.Laxmibai J. Mujgonda & Ors. .. Applicants
Vs.
Smt.Sarojini C. Samane & Ors. .. Respondents

....

Mr.Sanjay D. Thokader, Advocate for the Applicants.

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CORAM : RAVI K. DESHPANDE, J.

DATED : JUNE 12, 2015.

P.C. :

This application seeks condonation of delay for 3 years and 126 days caused in filing the Second Appeal challenging the judgment and decree passed on 17th January, 2007 by the Lower Appellate Court in Civil Appeal No.21 of 2001. The lower Appellate Court has modified the decree of the Trial Court and granted the decree for partition and possession of 1/8th share of the plaintiff-respondent. One Shri Jagannath was the owner of the property. Applicant is the wife of one Jagannath, whereas the respondent is the sister of Jagannath. The claim was for partition and separate possession.

2 In the application for condonation of delay, the reasons stated is that the applicant is old aged lady and she was not informed about the decision of the Lower Appellate Court, dated 17th January, 2007 by the counsel. Upon coming to know of this judgment, she filed an application for getting certified copy of the judgment and decree passed by the Appellate Court on 23rd April, 2007 and it was obtained on the very same day. The Appeal has been preferred on 21st August, 2007.

3 The respondent has filed a reply on affidavit opposing the claim made by the applicant for condonation of delay. It is brought to the notice of this Court that the applicant had engaged a lawyer who was representing her in the proceedings of Appeal and in Execution Proceedings. The applicant was served by pasting the notice on her last known address on 7th February, 2000. It is stated in the affidavit that the applicant avoided the service of notice and thus she was aware of the decree passed by the Appellate Court at least in the year 2000.

4 It is not disputed by the Applicant that she has sold half share in the suit property by registered sale deed dated 27th April, 2007 i.e. just before four months of the filing of the Second Appeal. This fact has not been disclosed in the application seeking condonation of delay. There is no explanation

in respect of this but an application was moved by the present appellant to join the subsequent purchaser as the party respondent in this Second Appeal.

5 In view of this aforesaid factual position, it is apparent that the appellant/applicant is not coming before this Court with clean hands. The material facts are suppressed and in order to over come the sale effected prior to filing of the Second Appeal, the purchasers are sought to be joined as respondents in the Second Appeal which would be of no significance.

6 The learned counsel appearing for the applicants submits that there are several other reasons also stated in the application to seek condonation of delay. However, in view of the fact that the applicant is not coming before this Court with clean hands, those reasons do not deserve consideration.

7 The learned counsel for the applicants submits that the applicant is prepared to pay costs of Rs.30,000/- (Rupees Thirty Thousand) or 40,000/- which may be imposed by the Court to allow the application. However, it is not possible to accept such proposition for the reason that the applicants lack all bonafides and apparently false reasons are stated that she was not aware of the decision given by the Lower Appellate Court.

8 Civil Application No.1396 of 2010 is dismissed. Consequently, the Second Appeal also stands dismissed.

(RAVI K. DESHPANDE, J.)