

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

913. SA/577/2014

VIKAS BHIKAJI SALVE

V/S

SMT.SUNANDABAI PANDHARINATH KASABE
& ORS.

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Mr.A.P.Bhandari, Advocate for Appellant.

Mr.H.V.Dhage, Advocate for R - 3.

Mr.Amol Gandhi, Advocate for R - 6 to 8.

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CORAM : T.V.NALAWADE, J.

DATE : 5th MAY, 2016

ORDER :-

. The Appeal is filed to challenge the Order made on Exh. 1 in M.A. No. 7/2014 which was pending in the Court of the District Judge - 1, Newasa, district Ahmednagar. Both sides are heard.

2. Spl. Civil Suit No. 22/2007 was filed by the respondents against the present appellant for relief of declaration, re-conveyance and possession of agricultural land. It was contended that there was oral agreement of re-conveyance, but as the defendant/appellant refused to re-

convey the property, the Suit was required to be filed. The appellant appeared in the Suit, but he did not file Written Statement and he did not turn up to cross examine the witnesses of plaintiff. Ultimately the Suit came to be decided on 11/08/2008 and the decree of re-conveyance is given, for which the plaintiffs are to pay the consideration of ₹ 1,10,000/-.

3. M.A.No. 7/2014 came to be filed on 04/03/2009 for condonation of delay of 176 days caused in filing the Appeal in the District Court. Present appellant gave evidence in support of his contention that his wife was sick, she was suffering from cancer and as she died on 28/08/2008, he was not in a position to take steps to file any Appeal and when he learnt about the decision of the Suit, he collected the certified copy and then filed the proceeding in the District Court. The application was opposed by the respondents by contending that no sufficient cause was shown.

4. For getting the condonation of delay, it was necessary for the appellant to show sufficient cause. It is not disputed that the appellant appeared in the Suit and he applied for time to file Written Statement and on all the 3 occasions viz. 03/09/2007, 27/09/2007 and 26/10/2007, adjournment was granted by the trial Court for filing Written Statement. It can be said that he did not turn up after filing 3rd application and then on the basis of the evidence given by the plaintiff, the Suit came to be decided on 11/08/2008 i.e. after about one year of seeking last adjournment in the Suit filed by the present appellant.

5. The appellant only contended that his wife died on 28/08/2008 and he produced death certificate. Though it was his contention that his wife was bed ridden for quite some time due to cancer and due to that he could not turn up to the Court, he did not produce record of any kind to that effect. Even in the present proceeding this Court had asked the learned counsel for the appellant to show the record of treatment to show that for the aforesaid period when the appellant did not turn up to the trial Court, his wife was under treatment for cancer. No such record was available with the appellant.

6. It appears that the application for getting certified copy was made on 21/09/2009 in the trial Court. The certified copy shows that the date 27/01/2009 was given to the appellant for collecting the certified copy and the copy was ready on that day. However, he turned up for collecting the copy on 09/02/2009. No explanation is given in respect of this delay. Further, when certified copy was collected on 09/02/2009, he filed proceeding in the District Court on 04/03/2009. No explanation is given in respect of this period also.

7. The submissions made and the record show that during pendency of the aforesaid delay condonation application in the District Court, the appellant sold the suit property to the third party. The said third party was not brought on record and the third party did not pray for condonation of delay by contending that he wanted to file Appeal. Thus, when the Suit was decreed against the present

appellant and he was expected to re-convey the property to the plaintiffs, without informing the Court, he sold the property to the third party to create complications. Such conduct of the party can not be ignored as the condonation of delay u/s 5 of the Limitation Act is a matter of discretion of the Court. The Court is not expected to use discretion in favour of the person who is guilty of conduct of aforesaid nature. Further, the delay of aforesaid different periods was not explained and there was no contention at all in respect of the aforesaid period specifically mentioned by this Court. The appellate Court is not expected to lightly interfere in the orders made by the Courts which involve the use of discretion. In view of these circumstances, this Court holds that no substantial question of law as such is involved in the present matter and the Appeal can not be admitted.

8. Learned counsel for the appellant placed reliance on some reported cases, viz.

[i] AIR 1998 SC – 3222
[N.Balakrishnan Vs. M. Krishnamurthy].

[ii] AIR 1987 SC – 1353
[Collector, Land Acquisition, Anantnag
Vs. Katiji].

[iii] (2007) 12 SCC – 427
[Manjabai Krishna Patil (D) by L.Rs.
Vs. Raghunath Revaji Patil & Anr.].

[iv] AIR 1926 BOM – 497
[Harkisandas Bhagvandas & Ors.
Vs. Bai Dhanu].

9. Learned counsel for the appellant submitted on the basis of the observations made in the aforesaid cases that cost can be imposed on the appellant and opportunity can be given to the appellant to get decision of the Appeal on merits. It can be said that no such opportunity can be given as, right from beginning, the appellant has played delaying tactics and he tried to create complication at every stage. Whether he had some arguable case in the first appeal need not be considered in the present matter in view of the facts and circumstances of the present matter.

10. In the result, Second Appeal stands dismissed. In view of dismissal of Second Appeal, both Civil Applications do not survive and stand disposed of.

11. At this stage, learned counsel for the appellant requested for continuation of interim relief granted. In view of the peculiar facts and circumstances of the case and the conduct of the appellant, such relief is refused.

[T.V.NALAWADE, J.]