

**IN THE HIGH COURT AT BOMBAY
APPELLATE SIDE, BENCH AT AURANGABAD**

916 CIVIL APPLICATION NO. 2636 OF 2016
IN SAST/26520/2015

MADHAV DINKAR SARGAR
VERSUS
DINKAR LIMBAJI SARGAR AND ANOTHER

...
Advocate for Applicant : Mantri Vipinchandra B.
Advocate for Respondents 1 & 2 : P.H. Sukale h/f. M.P. Kale
...

CORAM : T.V. NALAWADE, J.
DATED : 4th August, 2016.

ORDER :

1. The application is filed for condonation of delay of 1055 days caused in filing the second appeal against the judgment and decree of Regular Civil Appeal No. 100/2009, which was pending in the Court of Principal District Judge, Parbhani. Heard the learned counsel for applicant.

2. Huge delay is caused and so, the applicant was expected to show that there was sufficient cause for not filing appeal in time. As it is discretionary relief, this Court is also expected to ascertain that there is some arguable case to the applicant in the second appeal.

3. Copies of judgments of Regular Civil Suit No.

124/2008 and Regular Civil Appeal No. 100/2009 are produced on the record. The judgment of the previous suit bearing R.C.S. No. 109/2006 is also produced on the record.

4. In R.C.S. No. 109/2006 decree of partition and separate possession is given in favour of present respondents, plaintiffs of Regular Civil Suit No. 124/2008. Each of them were given 1/3rd share in the suit properties which included agricultural lands and house properties. The decree was put to an execution by the present respondents and the parties compromised in the execution proceeding and accordingly, some properties were accepted by present respondents, plaintiffs of R.C.S. No. 124/2008 as properties which had come to their share and accordingly, the execution proceeding was disposed of.

5. It is the case of present respondents, plaintiffs of R.C.S. No. 124/2008 that after aforesaid compromise which took place on 9.3.2007, the defendants tried to create obstruction in the possession of plaintiffs over the suit properties. Defendant is son of plaintiff No. 1 and plaintiff No. 2 is brother of defendant. They contended that as per the compromise and as they had accepted the suit properties as their share in the partition, the defendant has no right to interfere in the possession of

properties.

6. The defendant filed written statement. He denied the contention of compromise. He contended that justice is not done with him as partition is not properly done. He contended that mistake is committed and the partition is not equitable. He contended that no share was given to him in the value of bullocks which was around Rs. 70,000/- and due to compromise, he will be required to pay loan in respect of encumbrance on land Gat Nos. 99 and 85 which have fallen to his share. He contended that there is no construction on house No. 143 and so, he has feeling that fraud is played on him.

7. On the basis of aforesaid pleadings, issues were framed. Both the sides gave evidence. In view of the aforesaid compromise and the mutations made and the aforesaid nature of defence taken by the defendant, the suit was decreed. The findings are confirmed by the First Appellate Court.

8. The learned counsel for present applicant, original defendant submitted that substantial questions of law can be formulated on the point, whether the executing court could have allowed the compromise in such terms and whether the

executing court ought to have made equitable partition as per the decree given in the previous suit.

9. When the decree is put to an execution, it is the duty of the Court to see that the decree is fully satisfied. Similarly, there are rights with plaintiff and defendant, decree holder and judgment debtor. The decree holder can give up some of his rights and he can accept something less than what he can get under the decree for fullest satisfaction of the decree. When it is a partition decree, this principle applied to both the decree holder and judgment debtor. As the parties are Hindus, when they compromised the dispute and accepted few properties as their share in joint Hindu family properties, it was not open to say that it was not in accordance with the decree given by the Civil Court. This compromise is considered as the fullest satisfaction of the decree.

10. The aforesaid compromise was not challenged by filing any suit on the ground of fraud or other ground by the defendant. In view of these circumstances, there was no other alternative before the Courts below than to give the decree of injunction. Thus, virtually no arguable case is there in the appeal to the appellant. Huge delay, of more than 1000 days is caused

in filing the appeal. The contentions that he could not collect money by filing appeal and he had approached even Legal Aid Committee for getting help cannot make out sufficient ground in view of the nature of property given to him even under the compromise. In view of these circumstances, this Court holds that no sufficient cause is made out and there is virtually no arguable case in favour of applicant, appellant in second appeal. In the result, the application stands rejected.

[T.V. NALAWADE, J.]

SSC/