

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

***SECOND APPEAL NO. 235 OF 2016
ALONG WITH
CIVIL APPLICATION NO. 75 OF 2016***

Sou.Archana Pramod Hakke,
R/o. Mira Nagar, Near Gokuldham,
Behind Jule Solapur, Solapur.

... Appellant/applicant

v/s

1. Saheblal haidersab Jamadar @ Shaikh,
2. Latif Haidersab Jamadar @ Shaikh
3. Rashid Haidersab Jamadar @ Shaikh
All are residents of Achaler,
Tal. Lohara, Dist. Osmanabad.

... Respondents

Mr.Priyal Sarda for the appellant/applicant.

Mr.I.M. Khairdi for Resp. Nos.1 to 3.

Coram: N.M. Jamdar, J.

Dated: 14 June 2016

ORAL ORDER:

Heard learned counsel for the parties.

- 2 Admit. Learned counsel for the Respondents waives service.
- 3 The appeal is admitted on the following substantial question of law:

(I) Whether the first appellate court was right in rejecting the application filed by the Applicant for condonation of delay of eight months in filing the Civil Miscellaneous Appeal ?

4 Taken UP for disposal by consent. Paper-book dispensed with.

5 The Respondents – brothers of deceased Afasarbi Haidersab Jamadar @ Afsarbi M. Jafar Shaikh, who died on 15 January 2013, filed an application under Section 372 of the Indian Succession Act for issuance of succession certificate. In application, reference was made by the Respondents to the Appellant as living with the deceased and who was also nominated by the deceased in some Life Insurance Policies. It was stated by the Respondents that the Appellant has become major and married a man of different religion. It was asserted that having been married out of the religion, she had relinquished her right to the property. By order dated 10 January 2014, learned Civil Judge, Junior Division, issued the succession certificate in favour of the Respondents in respect of the properties of the deceased mentioned therein. The Appellant thereafter filed an appeal being Civil Misc. Appeal No.341 of 2014 in the District Court, Solapur. Since there was a delay of eight months in filing the appeal, the Applicant took out an application for condonation of delay which has been rejected by the impugned order. Learned District Judge held that no cogent reason was given by the Appellant.

6 Learned counsel for the Appellant submitted that the Applicant had given sufficient reason for condonation of delay. According to the learned

counsel for the Respondents, the Appellant had not shown any sufficient cause nor the appellant has any right in the property and, therefore, not only the application is correctly dismissed but no purpose will be served by condoning the delay.

7 In the application itself, the Respondents have stated that, since the appellant has married outside the religion, she has relinquished her rights to the property. The Appellant has stated that it is because of her marriage that the Respondents were annoyed and gave threats to her because of which she stayed away. The Appellant at the relevant time was 20 years old. Considering her age and the case of the Respondents themselves, the reason put-forth by the Appellant that she was threatened and out of fear she stayed away, cannot be stated to be improper one so as to reject her application and take away her right of substantive first appeal. The deceased had approached the District Court, Latur, for taking the Appellant in adoption, which application was granted. There are certain nominations in favour of the appellant and, therefore, *prima facie*, it cannot be said that the Appellant has no right in the property. Though the condonation of delay was within the discretion of the learned Judge, the discretion had to be used in judicial manner within the well settled norms. Considering the nature of the dispute and the facts and circumstances, it cannot be said that the exercise of discretion in not entertaining the substantive first appeal was legal and proper. The question of law framed will have to be answered accordingly in favour of the Appellant.

8 The second appeal accordingly is allowed. The order passed by the learned District Judge on 14 December 2015 in Civil Misc. Application

No.341 of 2014 is quashed and set aside. The application is allowed and the delay is condoned.

9 The Miscellaneous Civil Appeal filed by the Appellant challenging the order passed by the learned Civil Judge, Senior Division, dated 10 January 2014, stands restored to file. The learned Civil Judge will dispose of the same within a period of six months from today. Registry to communicate the order forthwith.

10 Pending the disposal of the Miscellaneous Civil Appeal, the ad-interim order granted by this Court on 14 January 2016 to continue.

11 All contentions of the parties are kept open. The observations made hereinabove are *prima facie*.

12 In view of disposal of the appeal, the civil application does not survive and is disposed of.

(N. M. JAMDAR, J.)