

IN THE COURT OF JUDICATURE AT BOMBAY  
NAGPUR BENCH, NAGPUR

**SECOND APPEAL NO. 474/2015**

(Suman w/o Madhukar Parlewar vs. Angatsingh s/o Laxmansingh Khagar)

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Office Notes, Office Memoranda of  
Coram, appearances, Court's orders  
of directions and Registrar's orders

Court's or Judge's order

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Mrs.S.W.Deshpande, Advocate for appellant  
Mr.N.A.Padhye, Adv. for respondent

**CORAM: A.B.CHAUDHARI, J.**

**DATED : 29<sup>th</sup> February, 2016.**

This Second Appeal is directed against the order made by the lower Appellate Court refusing to condone the delay 8-years 7-months and 13-days in filing the Appeal, under Section 96 of the Code of Civil Procedure.

Mrs. S.W.Deshpande, learned counsel for the appellant, taking support of judgment and order dated 27<sup>th</sup> June, 2006 of this Court in Writ Petition No. 5416/2005, has submitted that around 1600 days' delay was condoned, in that case between the same parties and, therefore, the delay of 8-years, 7-months and 13-days should be condoned and the Second Appeal be sent back for hearing on merits.

I have heard learned counsel Mr.N.A.Padhye, learned counsel for respondent, who opposed the Appeal tooth and nail and supported the impugned order passed by the lower Appellate Court. Upon hearing the learned counsel for the rival parties and

open perusal of the reasons given by the lower Appellate Court in paragraph 5 and 6 thereof, I am satisfied that the first Appellate Court made no mistake in refusing to condone the delay of 8 years and odd. The reasons given in paragraph 5 and 6 read thus:

“5. Admittedly, RCA No. 383/2006 is against the judgment and decree passed in RCS No. 1570/2000 which was filed by the applicant against her husband. It is to be noted here that both applicant and her witness specifically averred that the applicant was in regular touch with her earlier Advocate Shri Khandwe and inspite of that, neither applicant nor her son (AW.2) had given any notice to Adv. Shri Khandwe for not giving any information about the progress of special Civil suit No.894/1997 to the applicant. To that to show that, applicant lodged complaint against Adv. Khandwe with Bar Council of Maharashtra and Goa on 20.8.2008, a xerox copy of said compliant is filed on record. Here in this matter, neither applicant nor her witness made it clear when exactly the legal heirs of the husband of applicant were brought on record to RCA No.383/2006. As already discussed that, in his cross-examination AW.12 Prashant stated that his father expired in the year 2006. It has not been made it clear whether the heirs of the husband of applicant were brought on record to the RCA No.383/2006 in the year 2008. No material is produced on record to show that the President of bar Council of Maharashtra and Goa has issued any notice to Adv.Khandwe. Moreover, it also appears that after filing the complaint with the chairman of Bar Council of Maharashtra and Goa, the applicant had not pursued the said matter. The witness of applicant in his cross-examination stated that since from 1990 he is in the service of Central Government, in the month of July 2008 he was drawing the salary of Rs. 25,000/- p.m. He also stated that his father died in the year 2006, he was

residing along with his father and mother and when such is the fact then it cannot be accepted that the applicant was not in a position to arrange the funds to the extent of Rs.7,500/- to pay the court fees.

6. In her affidavit of evidence, applicant specifically stated that she was in touch with her earlier Advocate all the while and enquiring about the development of the matter and her earlier Advocate always assured her that there is no progress in the matter and she need not worry about it. When such is the fact, then the applicant ought to have issued notice to her earlier Advocate, when she noticed that her earlier Advocate filed pursis in Special Civil Suit No. 894/1997 and the suit was decreed ex parte, for misleading her. But instead of issuing notice to her earlier advocate she lodged compliant against him to the chairman of Bar council of Maharashtra & Goa. Xerox copy of the said complaint filed by the applicant herself on record which, on its cursory perusal, speaks that, the applicant nowhere mentioned that she was always and continuously in touch with her earlier Advocate and was enquiring him about the progress of Special Civil Suit No.894/1997 and her earlier advocate was informing her that there is no progress and development in the said suit, as pleaded in the application and deposed in the affidavit of evidence and therefore, it is very difficult for the court to believe that the applicant was not knowing any progress about the suit, most particularly, which had been filed against her and wherein a relief that claimed, was a money decree, it is also important to note that the applicant has not stated anything about Special Civil Suit No/ 855/1997 that filed by the non-applicant against her and her husband, that is to say, whether it is decreed or dismissed or still pending. From the attitude of the applicant, it appears that she has concealed some true facts from the court and not coming before the court with clean hands. “

It is true that the Courts are liberal in condoning the delay or not throwing out the cause on the ground of delay; but then the inordinate delay of 8-years and odd is such that the rights crystallised in favour of the respondent cannot be disturbed lightly by the Courts, by endeavouring to condone the unconscionable delay. The Court is bound to consider the prejudice that would be caused to the other side in that event. In that view of the matter, I find no merit in the Second Appeal. Hence the following order:

**ORDER**

Second Appeal No.474/2015 is dismissed summarily.

Learned counsel for the appellant prays for continuance of the interim order made by this Court, which is opposed by Mr.Padhye, learned counsel for the respondent vociferously.

In view of the interim order already made by this Court, the same shall continue for another period of six weeks from today.

**JUDGE**

*sahare*