

Sequeira

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

***SECOND APPEAL NO. 927 OF 2015
With
CIVIL APPLICATION NO. 2013 OF 2015
(For stay)***

1. Sou.Shakuntala Shankar Mali
Age 58 yrs. Occu. Agri & Household,
R/o. Hupari, Taluka – Hatkanangale,
District – Kolhapur.
2. Sou.Kisabai Ananda Mali
Age 50 yrs. Occu. Agri & Household,
R/o. Hupari, Taluka – Hatkanangale,
District – Kolhapur.
3. Sou. Indubai Nayaku Pangale
Age 45 yrs. Occu. Agri & Household,
R/o. Miraj, Taluka – Miraj,
District – Sangli.
4. Sou. Surekha Bhimrao Mali
Age 42 yrs. Occu. Agri & Household,
R/o. Palus, Taluka – Palus,
District – Sangli.
5. Santosh Shankar Mali
Age 39 yrs. Occu. Agriculture
R/o. Hupari, Taluka – Hatkanangale,
District – Kolhapur.

.. Appellants

Vs

1. Dilip Shivappa Sasane
Age. 43 yrs. Occu. Agriculture,
2. Tukaram Namdeo Mali
Age. 47 yrs. Occu. Agriculture,
3. Shrirang Namdeo Mali
Age. 50 yrs. Occu. Agriculture,

4. Maruti Namdeo Mali
(Deceased-Through L.R.)
 - 4A. Satyajit Maruti Mali
Age 39 yrs, (Joint Family Manager)
All. R/o Tasgaon, taluka, Tasgaon.
Dist.Sangli.
 5. Laxman Shankar Sasane
Age. 90 yrs. Occu. Agriculture,
(Deceased-Through L.R.)
 - 5A. Sou.Rekha Shankar Mali
Age. 38 yrs. Occu. Household,
R/o. Yelur, Taluka-Walva,
District – Sangli.
 6. Arun Laxman Sasane
Age. 68 yrs. Occu. Agriculture,
 7. Shrikant Laxman Sasane
Age. 65 yrs. Occu. Agriculture,
 8. Ravindra Laxman Sasane
Age. 60 yrs. Occu. Agriculture,
All R/o. Tasgaon, Taluka-Tasgaon,
District -Sangli.
- .. Respondents

Mr.Umesh Mankapure, for Appellants / Applicants.

Mr.Abhijit Kandarkar i/b Ramdas Shelke, for Respondent Nos.1 to 3,
4A & 7.

Coram : N.M.Jamdar, J.
Date : 24 April 2017.

Oral Judgment :

The Second Appeal is filed by the original Plaintiff No.1. The Appellants along with the other Plaintiffs filed a Regular Civil Suit No.152 of 2001 in the Court of Civil Judge Junior Division, Tasgaon

seeking partition of the suit properties. The learned Civil Judge partly decreed the Suit and declared the shares of the parties and sent the decree to the Collector for effecting the partition by mets and bounds and further directed to hand over the possession.

2. The Appellants filed an Appeal in District Court, Sangli along with an application bearing No.80 of 2012 for condonation of delay. The delay of 13 days in filing the Appeal was sought to be condoned. The learned District Judge by the impugned judgment and order dated 5 March 2015 rejected the application. Thereafter present Second Appeal is filed. The Appeal was admitted by order dated 17 February 2017, on the following substantial question of law.

(a) Whether the first Appellate Court was correct in law in not exercising the discretion vested in it for condonation of a short delay of 13 days on account of illness of Appellant No.1, who was the constituted attorney for all the Appellants in the matter of filing of the Appeal?'

3. By order dated 21 April 2017, the parties were put to notice that the Appeal will be taken up for final hearing

4. Heard learned counsel for the parties.

5. The Appellant had given a reason that the Appellant was unwell. Perusal of the decision of the learned District Judge would show that the learned District Judge has non suited the Appellants on the ground that the age of the Appellant No.1 in the certificate is 62

however, in the Application it is 58, and no bed-rest was advised to her.

6. There is a distinction between delay of short duration and delay of substantial period. The approach to be adopted by the Courts in both these situations is not the same. The delay of 13 days cannot be said to be of inordinate nature. When an application for condonation of delay is presented, rejecting it or allowing it are not the only options available to the Court. The equities can be balanced, looking at the duration of the delay and the cause being agitated, the ultimate goal being advancement of justice.

7. In my opinion, the dismissal of the Appeal, thereby taking away the chance of one appeal, in absence of any mischief or gross delay, was unduly harsh. It is not to say that a party has any vested right in the condonation of delay or the Court is under mandate to condone the delay, but in facts of the present case, if the learned Judge wanted to inculcate a sense of discipline, it could have been done by imposition of suitable costs. In the present case the learned District Judge has not considered the option of imposition of costs if the learned District Judge wanted to take a strict view.

8. The Respondents had to engage an advocate and appear in this Second Appeal, because of the fault of the Appellant, therefore, costs of Rs.10,000/- will be reasonable. The Appellants will pay costs of

Rs.10,000/- to the Respondents within period of eight weeks from today. The question of law framed accordingly will have to be answered in favour of the Appellants.

9. The Second Appeal is accordingly allowed. The judgment and order passed by the District Court Sangli, dated 5 March 2015 is quashed and set aside. The Miscellaneous Civil Application No.80 of 2012 is allowed. Civil Application accordingly, does not survive and is disposed of accordingly.

(N.M.Jamdar, J.)