

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

**CIVIL APPLICATION NO. 12152 OF 2017
IN SAST/19675/2017**

**SUNITA PARMESHWAR GAWALI
VERSUS
RAMKISHAN GANGARAM TIKHE AND OTHERS**

...
Advocate for the Applicant : Shri Kuptekar Sachin V.
Advocate for Respondents 1 to 3 : Shri Bora Satyajit S..
...

CORAM: RAVINDRA V. GHUGE, J.

DATE :- 12th January, 2018

Per Court:

1 The Applicant is the original Plaintiff, who has prayed for condonation of delay of 461 days caused in filing the Second Appeal.

2 The contention is that this Court is the last remedy in the State for the Applicant, who was about one year of age when her mother (Indubai) died on account of harassment by her husband Defendant No.1. The Applicant grew up in this background and preferred RCS No.128/2006 seeking partition and possession. The suit was decreed by the judgment dated 03.02.2012. However, by the judgment dated 09.12.2015, the Appellate Court allowed RCA No.36/2012 filed by the Defendants.

3 It is further stated that the Applicant being a lady and

married, lost time in preparing the Second Appeal and as such, delay of about 461 days has been caused.

4 Shri Bora, learned Advocate on behalf of the Respondents, has filed an affidavit in reply dated 30.11.2017 and strenuously opposed this application for the reasons set out in the reply. The contention is that Defendant No.1 had never fathered the Applicant from his first wife Indubai. Indubai passed away on 23.12.1987 and the Applicant claims to have been born on 01.05.1988. Defendant No.1 was prosecuted under Sections 306 and 498-A of the Indian Penal Code and was acquitted. It is stated that the Applicant desires to file the Second Appeal only to harass the Defendants.

5 The law on condonation of delay is now well settled in the light of the judgments of the Honourable Supreme Court in the matters of *Collector, Land Acquisition, Anantnag v/s Mst.Katiji*, **AIR 1987 SC 1353** and *Esha Bhattacharjee v/s Managing Committee of Raghunathpur Nafar Academy*, **(2013) 12 SCC 649**).

6 The learned Advocate for the Applicant submits that the Applicant is prepared to undergo a DNA test. This contention is opposed by Shri Bora on the ground that Defendant No.1 is neither agreeable for such a test, nor can he be compelled to undergo such a test.

7 It cannot be ignored that the Applicant succeeded before the Trial Court and has failed before the first Appellate Court. This Second

Appeal is the only hope for the Applicant. Delay of 461 days can neither be termed as being deliberate nor inordinate.

7 Considering the above factors, this Civil Application is allowed. Delay of 461 days is condoned by imposing costs of Rs.1000/- (Rupees One Thousand) on the Applicant keeping in view her social status and the fact that she comes from an agriculturist's family. Shri Bora graciously submits that the amount be donated to the Advocates Association of Bombay High Court, Bench at Aurangabad.

8 As such, the amount of Rs.1000/- shall be deposited by the Applicant with the Advocates Association of Bombay High Court, Bench at Aurangabad on or before 09.02.2018. After the costs are deposited and all office objections are removed in the Second Appeal, the Second Appeal be registered and be listed for admission on 14.02.2018.