

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

SECOND APPEAL NO.757 OF 2018 WITH
CIVIL APPLICATION NO.11438 OF 2018

Hari s/o Farida Dange

...APPELLANT

VERSUS

Hatladevi Magasvargiya C-operative
Grahnirman Sanstha, Osmanabad

...RESPONDENT

.....
Shri S.S. Choudhary, Advocate for appellant
Shri R.P. Bhumkar, Advocate for respondent
.....

CORAM: A.M. DHAVALÉ, J.

DATED : 29th October, 2018.

ORAL ORDER :

1. Heard learned Advocate Mr. S.S. Choudhary for the appellant. The appellant had executed a sale deed in favour of respondent/ defendant in respect of agricultural land. He filed Special Civil Suit No.63/2001 for cancellation of the sale deed. The learned Jt. Civil Judge, Senior Division, Osmanabad partly decreed the suit to the extent of money decree of Rs.2,00,000/- with interest @ 18% p.a. and the charge of the amount was kept on the property. This judgment dated 29.7.2005 was challenged after a huge delay of 11 years and 7 months. The learned District

Judge-3, Osmanabad rightly declined to condone the huge delay, but besides rejecting the application, the learned District Judge recorded that the applicant was at liberty to accept the cheque amount, if consented by the defendant.

2. When the appeal was not admitted on merits, learned first appellate Court should not have made comments on the merits. The learned trial Judge has kept a charge over the property for the unpaid price and the parties will be at liberty to pursue their remedies in the Executing Court.

3. Be that as it may. Learned Advocate Mr. Bhumkar for respondent fairly submits that, he is ready to pay the decretal amount as per the decision of the trial Court even today.

4. The appellant has tried to justify the huge delay of 11 years and 7 months on the ground that he is uneducated and economically not sound and his Regular Darkhast for execution was dismissed. By no stretch of imagination these grounds can be considered for condoning the huge delay of 11 years and 7 months. Hence, no substantial question of law is involved and the appeal cannot be admitted. However, it is recorded that, since the application for condonation of delay was rejected, the order of first appellate Court should be read only to that much extent and nothing more. The Second Appeal is disposed of. Civil

Application also stands disposed of. The respondent shall deposit the decretal amount within one month in the Executing Court from the date of uploading of the order.

(A.M. DHAVALA)
JUDGE

fmp/