

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

**SECOND APPEAL (ST) NO.21257 OF 2017
WITH
CIVIL APPLICATION NO.82 OF 2018
IN
SECOND APPEAL (ST) NO.21257 OF 2017**

Shri. Dilip Baburao Pagar	Appellant
V/s.	
Shri. Ishwar Ashok Thete & Ors.	Respondents

Mr. Nikhil Poojari i/by P.N. Joshi for the Appellant.

Mr. R.N. Gite for Respondent No.1A.

CORAM : M.S. SONAK, J.

DATE : 22nd FEBRUARY, 2018

P.C.

1. Heard Mr. Poojari, learned counsel for the Appellant and Mr. R.N. Gite, learned counsel for Respondent No.1A.

2. Mr. Poojari submits that the substantial questions of law which arise in this appeal are as follows:-

(i) Whether fair opportunity was granted to the appellant (original Defendant No.2) in the suit?

(ii) Whether sufficient cause had been made out by the appellant to seek condonation of delay of 2 years 7 months and 5 days in the institution of appeal before the first Appellate Court?

3. Mr. Poojari submits that the appellant has purchased the suit property by registered Sale Deed executed in his favour by the original Defendant No.3. He points out that the original Defendant No.3 had become the owner of the suit property by virtue of the deed executed in his favour by original Defendant No.1. He submits that in the Sale Deed executed by Defendant No.3 in favour of the appellant (Defendant No.5), there was a clear statement that there were no pending litigations in relation to the property sought to be conveyed. Mr. Poojari submits that the appellant (Defendant No.5) was therefore unaware of any pending litigation. Mr. Poojari further submits that Defendant No.1 represented to the appellant (Defendant No.5) that the pending litigation is nothing but a matrimonial dispute between Defendant No.1 and his wife Smt. Rukmini Ashok Thete, the legal guardian for the plaintiffs (minors). Mr. Poojari submits that Defendant No.1 held out to Defendant No.5 that settlement will certainly be arrived at between Defendant No.1 and Smt. Rukmini Thete. Mr. Poojari submits that the material available on record suggests that Defendant No.1 deposited an amount of Rs.1 Lac in the accounts of the plaintiffs towards settlement. Mr. Poojari submits that in view of this representation, the appellant (Defendant No.5) did not contest the suit and did not even prefer appeal against the decree within a period of limitation. He submits that only when execution was

applied for that the appellant realized that the representation as regards settlement was incorrect and therefore, instituted the appeal alongwith application seeking condonation of delay.

4. Mr. Poojari submits that, in any case, in the suit for partition, a share has been allotted to Defendant No.1. He submits that since the appellant has derived title through Defendant No.1, this is a fit case to grant the appellant an opportunity to prosecute the appeal on merits before the first Appellate Court subject to payment of some reasonable costs. For all these reasons, Mr. Poojari submits that the appeal may be admitted and interim reliefs granted.

5. Mr. Gite, the learned counsel for Respondent No.1 points out that there is absolutely nothing bonafide, either in the conduct of the appeal or in the cause shown for condonation of delay. He submits that the appellant purchased the suit property permanently i.e. during the pendency of Special Civil Suit No.15/2001. Despite the appellant being impleaded as a defendant in the suit, he chose not to contest the same. The theory of settlement between Defendant No.1 and the plaintiffs now floated is unbelievable and in case, self serving. The Appellate Court has rightly held that there is clear collusion between the defendants. Mr. Gite submits that there is absolutely no question of how much less any substantial questions of law involved in this appeal and therefore, the appeal may be dismissed with exemplary costs.

6. Upon due consideration of the rival contentions and persual of the material on record, it cannot be said that there is any question of law, much less any substantial questions of law involved in this appeal.

7. Admittedly, the appellant, is a purchaser pendente lite. Although, strictly speaking, it may not even have been necessary to implead the appellant as a party to the suit, the appellant was infact impleaded as a party to the proceedings. The appellant, however, chose not to contest the suit. The only explanation furnished is that Defendant No.1 had held out a representation that the suit is nothing but a matrimonial dispute, which will be eventually settled. There is no basis to establish that any such representation was at all held out. In any case, nothing prevented the appellant to putforth his case as a matter of abundant caution.

8. The suit was decreed on 28.03.2006. At least once the suit was decreed, the appellant who has purchased the suit property with full knowledge of pending litigation, should have reacted and instituted the appeal within a period of limitation or at least within some reasonable period thereafter. Again, for a period of at least 2 years 7 months and 5 days no appeal was instituted against the decree. That the representation allegedly held out by Defendant No.1 persisted even after the decree was made in the suit is nothing but a malafide reason put forth only to delay the proceedings and to deprive the original

plaintiffs the fruits of their decree.

9. The appellate court has quite rightly held that no sufficient cause was shown for condonation of delay of over 2 years and 7 months and in any case, the reasons stated were not at all bonafide. The appellate court has rightly held that on basis of some self serving statements and by attempting to lay blame upon one of the defendants through whom the appellant ultimately claim some rights, neither can such inordinate delay be condoned nor can the decree holders be deprived the fruits of their decree.

10. In the entire memo of appeal, no substantial question of law has been framed and even the questions proposed by Mr. Poojari can hardly be styled as any questions of law, much less any substantial questions of law.

11. For the aforesaid reasons, appeal is dismissed. Accordingly, the civil application does not survive and the same is also disposed of. However, there shall be no order as to costs.

(M.S. SONAK, J.)