

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

CIVIL APPLICATION NO. 1492 OF 2017
IN
SECOND APPEAL (STAMP) NO. 24844 OF 2017

Sheetal Keshav Bhosale .. Appellant
vs.
Pratibha Subhash Tribhuvan & Ors. .. Respondents

Mr. Vikas Shivarkar for Applicant / Appellant.
Mr. Mahesh Rawool for Respondent No. 1.
Mr. Vikas Shivgan i/b. P. M. Dabade for Respondent Nos. 2 and 3.

CORAM : M. S. SONAK, J.
DATE: 23 FEBRUARY 2018

P.C :

- 1] Heard learned counsel for the parties.
- 2] This is a civil application seeking condonation of delay of 1 years and 260 days in institution of second appeal.
- 3] The reason stated in the civil application is that the applicant had shifted her residence temporarily from Baramati to Pune and therefore, was unaware of the impugned judgment and decree for quite some time. It is pointed out that the applicant lost her cell phone and therefore access with her Advocate was also rendered difficult. It is pointed out that the applicant had to shift on account of educational requirements of her children. It is pointed out that the mother of the applicant is quite naive and was under the impression that the appeal has been instituted against the impugned judgment and decree or in any case, that the appeal is still pending before the first appellate court and not yet disposed of. It is submitted that all these factors constituted sufficient cause and the delay may therefore be condoned.

4] On the other hand, the learned counsel for the respondent no. 1 points out that the respondent no. 1 has filed a reply opposing the application for condonation of delay. In reply it is pointed out that this very applicant during the pendency of proceedings before the first appellate court went ahead and sold a portion of the suit property in favour of one Kamble. Copy of the sale deed is also annexed to the reply. It is pointed out that the statement that the applicant was unaware of the impugned judgment and decree is quite false and no indulgence may be granted in favour of such applicant who has scant regard for the process of law.

5] Upon due consideration of the rival contentions, it is necessary to note that it was not at all proper for the applicant to have sold a portion of the suit property, despite the decree of the trial court ordering partition. In the sale deed, the applicant has signed under the recital that there is no pending litigation, when clearly, such litigation was pending before the appeal court.

6] Ordinarily, therefore, discretion was required to be exercised against the applicant. However, there is reason to believe that the applicant had shifted her residence from Baramati to Pune and therefore, it is possible that the applicant was unaware of the impugned judgment and decree within some reasonable time after the same was made. Besides, it is a dispute between the brother and sister and it is pointed out that the sister is virtually non suited and the share awarded to the brother is much in excess of what is permissible under the law. At this stage, there is no question of accepting all such contentions. However, the fact remains that it is a dispute between the brother and the sister. The possibility that the applicant lost contact with her Advocate on account of the loss of her cell phone is also, not an improbable case. Taking into consideration all these circumstances, the delay can be condoned

subject to the applicant, paying costs of Rs.15,000/- (Rupees Fifteen Thousand) to the respondent no. 1, who has filed a reply to oppose the application for condonation of delay.

7] In a matter of this nature, some lapse on the part of the applicant is always there. However, though, the conduct of the applicant selling a portion of the suit property during the pendency of the appeal is not appreciated, it cannot be said that the reasons in support of the application for condonation of delay are either false or *mala fide*. It is not as if the applicant, has gained something substantial by delaying the filing of this appeal. The application for condonation of delay subject to payment of costs is therefore considered from this perspective.

8] The civil application is allowed. The delay in institution of the second appeal is condoned subject to the applicant paying costs of Rs.15,000/- to the respondent no.1 within a period of four weeks from today. Amount of costs to be deposited before the trial court within a period of four weeks from today with necessary intimation to the learned counsel appearing for the respondent no. 1. The intimation to be given within one week from the date of deposit. If amount of costs is not deposited, then, the civil application shall be deemed to have been dismissed without any further reference to this court.

9] If the amount of costs are deposited, the respondent no. 1 is at liberty to withdraw the same unconditionally.

10] If the amount of costs are deposited, place the second appeal for admission on 6th April 2018.

(M. S. SONAK, J.)