

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

929 SECOND APPEAL NO.253 OF 2019
WITH
CA/13862/2018 IN SA/253/2019 WITH CA/13860/2018 IN
SA/253/2019

Nandkishor S/o Balwantrao Patil
Age 5, Occ. Agri.,
R/o. Chavanda Galli,
Ahmedpur, Dist. Latur

... Appellant
(Ori. Defendant)

Versus

Satyabhama W/o Balaji Mali (Waghmare)
Age 46, Occu. Agri. and household,
R/o. Kranti Chauk, Bagban Galli,
Ahmedpur, Tal. Ahmedpur,
Dist. Latur.

... Respondent
(Ori. Plaintiff)

...
Mr. Ajay T. Kanawade and Mr. S.K. Mathpati, Advocates for
the Appellant.
Mr. V.D. Gunale, Advocate for the Respondent.

...

CORAM : V.L. ACHLIYA, J.

DATED : 26th NOVEMBER, 2019

ORAL ORDER :-

. Being aggrieved by the judgment and order dated 07.03.2018 passed in Misc. Civil Application No.08/2017 by District Judge-1, Ahmedpur, Dist. Latur, the appellant – original defendant has preferred this appeal. By the impugned judgment and order passed by the first appellate court, the application

moved by the appellant – original defendant seeking condonation of delay in filing the appeal came to be rejected.

2. Heard the learned counsel for the appellant – original defendant and the learned counsel representing the respondent – original plaintiff. Perused the impugned judgment and order.

3. In brief, it is the contention of the learned counsel for the appellant – original defendant that the first appellate court acted too technically in deciding the application seeking condonation of delay. It is submitted that it is quite settled position that while dealing with the application seeking condonation of delay, the court must adopt liberal and pragmatic approach. In support of the submission, the learned counsel has referred and relied upon the judgment and order dated 21.09.2018 passed by this court in the case of *Naim Ahemad S/o Abdul Mannan and Ors. Vs. Shahanaz Begum W/o. Gulam Mohammad and Ors.* in *Second Appeal No.689/2018*.

4. It is submitted that after the judgment and decree passed by the first appellate court, the appellant has presented appeal along with the application seeking condonation of 176 days delay in filing appeal. It is submitted that due to poor financial condition, the applicant could not deposit the requisite court fees and sought time to deposit the same. The appeal was presented

along with application seeking time till 03.09.2016 to deposit the court fees. The court has granted time till 29.08.2016 to deposit the court fees. However, the appellant could not deposit the same. Therefore, the registration of appeal refused vide order dated 03.09.2016 and the application seeking condonation of delay came to be dismissed for want of payment of deficit court fees. Thereafter, the appellant again filed appeal with application seeking condonation of delay in filing appeal. However, the court has refused to condone the delay and rejected the application. In consequence, the appeal came to be dismissed. By referring the overall facts of the case, the learned counsel submits that for the fault on the part of the advocate of appellant, the appellant should not have been made to suffer.

5. On the other hand, Mr. Gunale, learned counsel for the respondent opposed the admission of appeal with contention that the appeal filed by the appellant is devoid of merit. It is submitted that the appeal raises no substantial question(s) of law. It is submitted that the decree under challenge already executed and the possession of the land has been taken long back by the respondent. It is further submitted that the amount of sale consideration, which the respondent has deposited also withdrawn by the appellant. So also, the appeal filed by the appellant is not tenable as filing of successive appeal before same

court after rejection of earlier appeal not permissible under law. It is pointed out that as against the decree passed by trial court, the appellant presented an appeal along with application seeking condonation of delay. The appeal was dismissed vide order dated 03.09.2016 for want of payment of deficit court fees. The order passed by the first appellate court attained finality. Subsequent thereto, the appellant made efforts to stall the execution by raising various objections. When the appellant failed to stall the execution of decree, he again filed appeal challenging the judgment and decree passed by the trial court with application seeking condonation of 537 days delay in filing appeal. The first appellate court rejected the application seeking condonation of delay by observing that the appeal filed by the appellant itself not tenable in law. So also, it is observed that the appellant has failed to satisfy that sufficient cause exists to condone the delay. In the light of order passed by the first appellate court, the learned counsel submits that the appeal raises no substantial questions of law to entertain the appeal.

6. I have carefully considered the submissions advanced in the light of order passed by the first appellate court. It is a *sine qua non* for maintaining the second appeal that the appellant must make out a case that appeal raises substantial question(s) of law.

7. On due consideration of the submissions advanced in the light of the order passed, I am of the view that the appeal raises no substantial questions of law so as to entertain this second appeal. The appeal filed by the appellant is devoid of merit. Moreover, the decree passed by the trial court has been executed. The sale deed in respect of the suit land has been executed in execution of decree. According to the learned counsel for the respondent, the sale deed was executed on 14.02.2017. The sale consideration deposited by the respondent with court also withdrawn by the appellant. In that view, nothing survives to prosecute the appeal. The judgment and order passed by the first appellate court is reasoned and suffers from no infirmity. There is absolutely no perversity in the judgment and order passed by the first appellate court. The decision in the case of *Naim Ahemad* (supra) relied by learned counsel have no bearing upon the facts of the present case. While condoning the delay, although the courts of law are expected to adopt liberal and pragmatic approach, but it is not the rule that court must condone delay in each and every case irrespective of facts and sufficient cause being shown to condone the delay. The court has to decide the application seeking condonation of delay on the basis of merit of each of the case. While rejecting the application seeking condonation of delay, the first appellate court has observed in its

order that the appellant has filed the appeal along with application seeking condonation of delay, which was dismissed vide order dated 03.06.2016 for non payment of deficit court fees. The said order was not challenged. So also, no application filed to recall the order and to pay the deficit court fees. After dismissal of the appeal, the appellant has chosen to appear before executing court and raise objection to execution of decree. Since the appellant has failed to execute sale deed, the executing court constrained to pass order dated 02.01.2017 to execute the sale deed in terms of decree. Accordingly, the sale deed was executed on 14.02.2017. The respondent has deposited Rs.9,06,000/- in the court towards sale consideration. The appellant moved application (Exhibit 30) on 02.01.2017 to withdraw said amount deposited by the respondent. After the execution of decree and withdrawal of amount, the appellant has once again filed appeal along with application seeking condonation of delay. The trial court has found the reasons assigned for condonation of delay to be concocted. Accordingly, rejected the application. In that view, the order passed by the first appellate court cannot be termed as perverse and calls for interference in exercise of the appellate jurisdiction of this Court. Thus the appeal raises no substantial question(s) of law. The decree to be challenged already executed. I am, therefore, not inclined to entertain appeal. Accordingly, the appeal is dismissed.

In view of dismissal of appeal, Civil Application Nos.13860/2018 and 13862/2018 stand disposed of in terms of order in appeal.

(V.L. ACHLIYA)
JUDGE

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