

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

915 SECOND APPEAL NO.539 OF 2019

Indubai w/o.Maroti Shinde **..APPELLANT**

VERSUS

- 1] Sulochana w/o.Chandrabhan Late.
- 2] Aishwarya d/o. Chandrabhan Late.
- 3] Mayuri d/o. Chandrabhan Late.
- 4] Nyahabai w/o. Karbhari Late.
- 5] Kalabai w/o. Ramesh Dukre.

..RESPONDENTS

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Mr.K.F.Shingare, Advocate for the appellant.

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CORAM : V.L.ACHLIYA,J.

DATE : 24.09.2019

PER COURT:

1] Being aggrieved by the rejection of the Application for condonation of delay by the First Appellate Court, the present appellant—original defendant no.2 has preferred this Appeal.

2] Heard the learned counsel for the appellant. Perused the impugned judgment and order passed by the First Appellate Court to reject the application seeking condonation of 1688 days delay in filing the Appeal i.e. to challenge the *ex parte* decree passed by the trial Court.

3] In brief, it is the contention of the learned counsel for the appellant that the order passed by the First Appellate Court is not sustainable in law. It is submitted that the order has been passed without considering purport of Section 5 of the Limitation Act. It is further submitted that the delay has been properly explained. There was no proper service of suit summons. The suit summon was not personally served upon the appellant-defendant no.2. The suit summons was served upon the son of the appellant, who was residing separately. Without proper service, the trial Court has proceeded with the case and has passed *ex parte* decree, thereby directing the defendant nos.1 and 2 to re-convey the suit property. It is submitted that in the month of October, 2015, the appellant received notice of execution proceedings filed by the respondent nos.1 to 4. Thereafter, the appellant made an enquiry in respect of the decree to be executed by the Executing Court. It was revealed that the plaintiff has filed Special Civil Suit No.9/2010 as against respondent no.5 i.e. defendant no.1 as well as the appellant-original defendant no.2 seeking specific performance of contract, declaration

and perpetual injunction. The suit was filed on 17.12.2009. The respondent nos.1 to 4-plaintiffs had purchased the suit property from the respondent no.5—original defendant no.1 on 25.06.2009. The suit was decreed on 06.04.2011. The appellant made application seeking certified copy on 05.11.2015. The certified copy was received on 17.11.2015. Appeal along with application for condonation of delay was presented on 17.12.2015. In this background, learned counsel submits that sufficient cause has been shown for condoning the delay in filing appeal on the part of the appellant—defendant no.2. The Court has adopted hyper-technical approach in rejecting the application. It is submitted that the appellant has good case to succeed on merit. The learned counsel has referred and relied upon the decision of this Court in the case of *Shankar s/o. Deoji Sonwane [since deceased] through L.Rs. Smt. Janabai wd/o. Shankar Sonwane & others Vs. Sheku s/o. Kondaji Kale reported in 2019 [5] Mh.L.J. 466.*

4] I have carefully considered the submissions advanced in the light of the order dated 25.07.2019 passed by the First

Appellate Court to reject the application seeking condonation of 1688 days delay in filing the appeal. On due consideration of the submissions in the light of the order passed, I am of the view that appeal raises no substantial questions of law. The order passed by the First Appellate Court is reasoned and quite consistent with the facts of the case and fully in consonance with the principles of law laid down in the matter of condonation of delay.

5] After perusal of the record and proceedings of trial Court and scrutinizing the evidence adduced in support of cause assigned to condone the delay, the First Appellate Court has reached to the conclusion that the cause assigned cannot be accepted as sufficient to condone the delay of 1688 days. It is further observed that false and concocted reasons have been assigned to condone the delay. It is observed that as per evidence adduced in the case and more particularly, the ration card produced in evidence, the appellant residing with her two sons. The Court has further observed that there was proper service as contemplated under Order V Rule 15 of the Civil Procedure

Code. The suit summon has been duly served upon the adult family member of the appellant. It is further observed that in the application, the appellant has deliberately made false statement as to absence of knowledge of decree passed by the trial Court. It is noted in the order that though the notice of the execution proceedings served upon appellant in the year 2014 and immediately thereafter the appellant has recorded her appearance through advocate in execution proceeding in the year 2014, still the applicant-appellant has falsely claimed that the applicant got knowledge of judgment and decree passed by the trial Court on 15.09.2015.

6] Considering the over all facts of case and the evidence adduced, the Appellate Court has rejected the application by recording the reasons in detail. Thus, there is absolutely no perversity in reasons recorded by Appellate Court to refuse to condone delay. In absence of any perversity and substantial questions of law being involved in appeal, I am not inclined to entertain this Appeal. Accordingly, appeal is dismissed.

7] In view of dismissal of Appeal, pending Civil Application No.11471/2019 stands disposed of in terms of the order passed in the Appeal.

[V . L . ACHLIYA]
JUDGE

DDC