

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 3035 OF 2012

Smt. Lochana Vasant Ingale

.....Petitioner

V/s.

Shri. Vasant Bidu Ingale

(since deceased) thru. Heirs

and Ors.

....Respondents

Mr. Dilip Shinde i/by. Mr. Vikas Mali, Advocate for the petitioner.

Mr. Gautam T. Kanchanpurkar, Advocate for respondents no.4 and 5.

CORAM : SANDEEP K. SHINDE, J.

Thursday, 20th June, 2019.

P.C. :

1. Heard learned Counsel for the parties.
2. The petitioners Regular Civil Suit No. 95 of 1993

was dismissed for default on 24th February, 2005. The application for restoration of the suit alongwith an application for condonation of delay of 4 months and 10 days was filed. The learned Judge declined to condone the delay vide order dated 29th November, 2011. It is against this order, the petition is preferred.

3. The suit is instituted by the son and daughter against the father and purchaser of the property which father alienated without notice and for want of legal necessity. The suit was instituted in the year 1992. However, it appears since the year 2000, the petitioner plaintiff had not taken any steps to conduct the matter. It is so observed in the order dated 24th February, 2005. The issues were framed in February, 1995 and the suit was posted for leading evidence. On 24th February, 2005, the plaintiff was absent; the suit was dismissed.

4. The petitioner, plaintiff would contend that she came to know about the dismissal of the suit for the first time

on 27th April, 2006. She would further contend that, her Advocate did not inform that the suit was dismissed on 24th February, 2005. That for these reasons, she could not apply for restoration of the suit and therefore the delay occurred was not intentional. She would further contend that, sufficient cause has been shown for condoning the delay.

5. Learned Counsel for the petitioner has taken me through the order of dismissal of the suit dated 24th February, 2005 and the impugned order dated 25th November, 2011.

6. It appears in the application for condonation of delay, evidence was led by the parties. It appears that, on the date of dismissal of the suit i.e. 24th February, 2005 another suit instituted by the plaintiff was pending in the Court. In evidence, the plaintiff deposed that on 24th February, 2005 there were two suits and she was present in the Court. This evidence is contrary to her application and her advocate did not inform her about the factum of dismissal of the suit. Thus, taking into consideration the evidence on record, the

learned Judge has correctly dismissed the application having found, no sufficient cause whatsoever was shown for condonation of delay. Thus, no interference is called for. The petition is accordingly dismissed.

(SANDEEP K. SHINDE, J)