

Urmila Ingale

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
SECOND APPEAL NO. 610 OF 2018
WITH
CIVIL APPLICATION NO. 1390 OF 2018

Balu Shankar Sandbhor	.. Appellant
Vs.	
Santosh Balu Sandbhor and ors.	.. Respondents

Mr.Dhairyasheel Sutar, for the Appellant.
Ms.Diya Jadhav I/b Mr.Tushar Jadhav, for the Respondents
No.1 & 2.

CORAM : M.S.KARNIK, J.

DATE : 10th JULY, 2019

P.C. :

. Heard. Admit on the following substantial question
of law.

“Whether the Appellate Court was justified in rejecting the application for condonation of delay in filing the Appeal in the light of the material on record showing sufficient cause for condonation of delay ?”

2. The appellant is the original defendant No.1.

Defendant No.1 is the father of the original plaintiff. The Suit was filed by the plaintiff - present respondent No.1 against the father for partition and separate possession. Defendants No.2 & 3 are the brothers of defendant No.1 who are arrayed as party defendants. Defendants no.4 & 5 are sisters of defendant No.1 whereas defendant No. 6 is the mother of the plaintiff. The trial Court by the judgment and decree dated 13/10/2010 granted 1/15th share each to the plaintiff, defendant No.1 and defendant No.6.

3. Defendant No.1 after the delay of almost 3 years and 45 days approached the Appellate Court by filing Civil Misc. Application No. 106 of 2014 for condonation of delay. In the application for condonation of delay, the appellant stated that he was not staying in the village and was residing outside as he had taken up a job. He further stated that he was not keeping good health and suffering from bronchitis. He further stated that he was taking treatment of Dr. Takalkar at Rajgurunagar. His health was deteriorating with every passing day and he was

advised to take rest, therefore, he could not obtain certified copies of judgment and decree of the trial Court. It was only on 11/10/2013 he filed an application for certified copies and after receiving the same on 29/10/2013, the Appeal is filed before the Appellate Court.

4. The Appellate Court by the impugned order dated 07/02/2018 rejected the application for condonation of delay.

5. Learned Counsel for the appellant submitted that the Appellate Court adopted a hyper technical approach. He further submitted that looking at the age of appellant, the Appellate Court should have adopted a liberal approach for condoning the delay. He moreover submits that even otherwise, he has a good case as defendant No. 6 who is wife of the appellant was receiving maintenance and therefore not entitled to the share in the suit property. Learned Counsel submitted that if at all he succeeds on merits, he will be in a position to get a larger share. Learned Counsel would rely upon decision of

this Court in the case of **Dr.Ashok Rajmal Mehta Vs. Shree Tirthankar Co. 2018(1) Mh.L.J.185** to submit that expression 'sufficient cause' must receive a liberal construction so as to advance substantial justice.

6. Per contra, learned Counsel for the respondents No.1 & 2 opposed the submissions of the learned Counsel for the appellant. She would submit that the delay is gross. According to her, almost for 3 years 45 days, the appellant did not take any steps though he was residing in the same village. She moreover submits that even the application for condonation of delay was not prosecuted expediently and it was so observed by the Appellate Court as well. She would submit that even the reason that the appellant is suffering from medical ailment is not supported by any evidence. She also pointed out that in the meantime, decree has been executed. According to her, present proceedings are nothing but an attempt to harass the respondents No.1 & 2. She would rely upon the decision of the Apex Court **dated 20/01/2015 in the case of Laxmidevamma**

Vs. Ranganath in Civil Appeal No. 176 of 2015 to submit that unless the findings recorded by the Appellate Court are shown to be perverse, the High Court should not interfere.

7. Heard learned Counsel for the parties. All respondents are served. The Suit is filed by the plaintiff for partition and trial Court has decreed the Suit by granting 1/15th each share to the plaintiff, defendant No.1 and defendant No.6. No doubt, there is delay of 3 years and 45 days in filing the Appeal. The appellant has given reason that he was suffering from bronchitis and as his health was deteriorating, he could not obtain the copies of the proceedings in respect of the judgment and decree of the trial Court. The Appellate Court did not find explanation sufficient to condone the delay. In my opinion, considering the averments made in the application for condonation of delay and more particularly that appellant was suffering from bronchitis and ailing, though medical evidence in that regard was not produced, however, the refusal to condone the delay would result in foreclosing the appellant from putting

his cause. There is no presumption that delay in approaching the Court is always deliberate. It is settled law that the expression 'sufficient cause' should receive a liberal construction so as to advance substantial justice. No doubt, respondent No.1 would be put to inconvenience as a result of condoning the delay of 3 years and 45 days in filing the Appeal, however, the Appellate Court in my opinion, in the facts of the present case, could have condoned the delay by imposing exemplary costs.

8. In this view of the matter, the impugned order is set aside. The present Appeal is allowed subject to paying costs of Rs.25,000/- by the appellant to the respondent No.1 within a period of 2 weeks from today.

9. In view of disposal of the Second Appeal, Civil Application does not survive and the same shall stand disposed of.

(M.S.KARNIK, J.)