

Urmila Ingale

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
SECOND APPEAL NO. 388 OF 2019
IN
CIVIL APPLICATION NO. 1377 OF 2018

Zumbrabai Shankar Salunke and ors. .. Appellants
Vs.
Shri Pradip Marutrao Badude .. Respondent

Mr.P. D.Dalvi i/b Mr.Ditendra Kumar Mishra, for the Appellants.
Mr.Prathamesh N. Bhargude, for the Respondent.

CORAM : M.S.KARNIK, J.

DATE : 07th OCTOBER, 2019

P.C. :

. Heard learned Counsel for the appellants. This Appeal challenges the judgment and order of the Appellate Court dated 06/03/2018 rejecting the application made by the appellants for condonation of delay of 6 years and 14 days in filing the Appeal.

2. The appellants are the original defendants. The

appellants are the legal heirs of Shri Shankar Salunke. Appellant No.1 is the wife of Shri Shankar Salunke and other appellants are the children of Shri Shankar Salunke. The respondents are the plaintiffs. The plaintiffs filed Suit for specific performance which was decreed exparte on 24/06/2010. The plaintiffs filed execution proceeding in the year 2010.

3. The original defendant – Shri Shankar Salunke died on 04/05/2011. The appellants were brought on record in the execution proceedings. The appellants filed Civil Misc. Application No. 813 of 2016 for condonation of delay of 6 years and 14 days in filing the Appeal. The Appellate Court rejected the application for condonation of delay.

4. Learned Counsel for the appellants vehemently submitted that the original defendant was not even served with the suit summons. Even insofar as the execution proceedings

are concerned, the notice was served on appellant No.1 in the year 2013. Learned Counsel for the appellants pointed out that record indicates that the notices issued to the other appellants are accepted by appellant No.1 on their behalf. Learned Counsel would submit that it was impermissible for the bailiff to have served the suit summons of the other appellants on the appellant No.1 as she is a lady. Learned Counsel would moreover submit that in the application, a specific plea has been taken that appellant No.1 was not keeping well and he would further submit that even otherwise delay could have been condoned by imposing cost. According to him, delay is not so gross.

5. He would further submit that as the Suit was for the specific performance of contract, it is necessary in the interest of justice that the appellants should not be deprived of their statutory right of an Appeal only on the ground of delay. The main contention is that other appellants are not served with the notice of execution and therefore it cannot be said that there is

delay. He would further submit that the Appellate Court erred in proceeding on the footing that there is delay of 6 years and 14 days in filing the Appeal when the record itself would indicate that notice of execution proceeding was served only in the year 2013.

6. Learned Counsel for the respondent on the other hand supported the impugned order. He invited my attention to the findings recorded by the Appellate Court. He also relied upon the decision of the Apex Court in the case of **Balwant Singh Vs. Jagdish Singh and ors. (2010) 8 Supreme Court Cases 685** to support his contention that though liberal construction has to be adopted in matters of condonation of delay, but the delay cannot be condoned for asking particularly in a case where the party has been very casual in pursuing the matter and the application ex-facie lacks bonafides.

7. Heard learned Counsel for the parties. Decree was passed on 24/06/2010. The original defendant died on

04/05/2011. Thereafter in the execution proceedings filed in the year 2010, legal heirs i.e. appellants are brought on record. The notices came to be issued of the execution proceedings. The record indicates that the notices of the execution are duly served on the appellants in the year 2013 and insofar as the appellants No. 1, 2, 3 are concerned, they appeared in the execution proceedings on 29/07/2013. Even the rest of the appellants are duly served in the year 2013 itself. In the application for condonation of delay, there is mention that the appellants appeared in August 2014. The record further shows that the notices of the execution were served in 2013 itself and even appearance is filed on behalf of some of the appellants in July 2013. Even after appearing in the execution, some of the appellants were not diligent in filing the Appeal with promptitude. The Appeal is filed almost after a period of 3 years from the date when the appellants entered their appearance in the execution proceedings. The application filed for condonation of delay does not indicate any satisfactory explanation for the delay of 3 years in filing the Appeal even if it

is assumed that appellants got knowledge about the decree in the year 2013. All these facts would indicate that appellants have been very casual. Moreover, even the facts are not stated correctly in the application for condonation of delay. It is correctly observed by the Appellate Court that there are no justifiable reason assigned by applicants to condone the delay of 6 years and 45 days. I am now informed that even the decree has been executed.

8. In this view of the matter, I see no reason to interfere with the order passed by the First Appellate Court. The Appeal is dismissed. In view of dismissal of the Appeal, Civil Application does not survive and the same shall stand disposed of accordingly.

(M.S.KARNIK, J.)

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by Urmila P.
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