

IN THE HIGH COURT OF JUDICATURE AT BOMBAY***CIVIL APPELLATE JURISDICTION*****SECOND APPEAL NO. 99 OF 2018****ALONGWITH****CIVIL APPLICATION NO. 224 OF 2018****Vanita Baliram Patil****..... Appellant****VERSUS****Nagarbai Vasudeo Patil & Ors.****..... Respondents**

Mr. Ashok B.Tajane for the Applicant.

Mr. Anand S. Kulkarni for the Respondent nos. 2 and 4.

CORAM : R.D. DHANUKA, J.**DATE : 22nd OCTOBER, 2019****P.C.**

Learned counsel for the parties agree that no reasoned order is required to be passed in this second appeal in view of the fact that this court has already allowed Civil Revision Application (St) No.2863 of 2019 and in view of the fact that the order is subject matter of this second appeal, is the outcome of the order passed by the learned Principal District Judge, Solapur below Ex.40 in Civil Misc. Application No. 218 of 1999 which civil revision application is allowed by this court today by a separate order passed. Statement is accepted.

2. Admit on the following substantial question of law :-

Whether the Principal District Judge – Solapur was right in not condoning the delay of 3 days in filing first appeal though the appellant had sufficiently explained the sufficient reasons in the application

for condonation of delay of 3 days in filing first appeal.

3. Mr.Kulkarni, learned counsel waives service for the respondent nos. 2 and 4.

4. Heard learned counsel for the appellant and for the respondents and have perused the application filed by the appellant for seeking condonation of delay. In my view, the delay of 3 days in filing first appeal was sufficiently explained by the appellant in the application and thus instead of hearing the matter on merit, the learned Principal District Judge has rejected the application for condonation of delay of 3 days. In my view, the appellant has made out a case for setting aside the impugned order passed by the learned Principal District Judge – Solapur. The substantial question of law is accordingly answered in negative.

5. I, therefore, pass the following order :-

(a) The order dated 14th September, 2019 passed by the learned Principal in Civil Misc. Application No. 218 of 1999 District Judge, Solapur below Ex.1 is set aside. Delay of 3 days in filing first appeal is condoned. First appeal is restored to file before the learned Principal District Judge, Solapur.

(b) The learned Principal District Judge, Solapur shall make an endeavour to dispose of the said first appeal bearing Civil Misc.Application No.218 of 1999 expeditiously and not later than four months

from the date of communication of this order.

(c) The parties are directed to co-operate with each other and with the learned Principal District Judge, Solapur in disposing of the said first appeal expeditiously and shall not seek any unnecessary adjournment.

(d) The parties are directed to appear before the learned Principal District Judge, Solapur on 8th November, 2019 at 11.00 a.m.

(e) It is made clear that this court has not expressed any views on the merit of the first appeal. All contentions therein are kept open.

(f) The appellant is directed to carry out amendment and to bring the legal heirs whose names are mentioned in the Civil Revision Application (St) No. 2863 of 2019 within two weeks from the date of the appellant and the contesting respondents appearing before the learned Principal District Judge, Solapur on the date fixed.

6. In view of the dismissal of the second appeal, Civil Application No.224 of 2018 for stay does not survive and is accordingly disposed of. No order as to costs.

[R.D.DHANUKA, J.]