

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

**SECOND APPEAL NO. 177 OF 2020
WITH
INTERIM APPLICATION NO.1 OF 2019**

Sushilabai Laxman Bhangare Appellant

Vs.

Laxman Shankar Sarukte Respondent

Mr. Tushar N. Sonawane for Appellant.
Mr. Gurudas S. Gorwadkar for Respondent.

**Coram : NITIN W. SAMBRE, J.
Date : 11th February, 2020**

P.C.:

1. This Court passed a detailed order dated 28th January, 2020, in which the steps taken by the appellant in the matter of raising the challenge to a decree for specific performance before wrong Forum or wherein taking legal advise has resulted in delay of about 8 years.

2. As such, question of law, which warrants consideration is :

“Whether there was sufficient cause demonstrated before the first appellate Court wherein an appeal against the decree for specific performance is questioned?

3. This Court, so as to test bonafides of the present appellant has directed to deposit an amount of Rs.25,000/- in this Court, which order is complied with.

4. Learned counsel for the respondent strenuously urged that after having realised that the market value of the property in relation to which a decree for specific performance was passed in favour of the respondent, the appellant is trying to twist the arms of the respondent to get back the property or to get some more consideration. According to him, the steps are reflected in the order of this Court dated 28th January, 2020 are nothing but eye wash.

5. He sought dismissal.

6. Considered the submissions.

7. The fact remains that initially the proceedings initiated under Order 9, Rule 13 based on an exparte decree of specific performance arising out of unregistered agreement was dismissed and the proceedings for restoration were pending.

8. After the said proceedings were dismissed, the appeal as provided under Section 96 of C.P.C. was preferred.

9. As such, appeal appears to be maintainable particularly in the wake of law laid down in the matter of Bhivchandra Shankar More Vs. Balu Gangaram More and others, arising out of Civil Appeal No. 4669 of 2019, decided by the Hon'ble Apex Court on 7th May, 2019.

10. As the remedy of appeal is a statutory remedy, the denial of such remedy to a rustic lady like the appellant, in my opinion will result an injustice. Apart from above, this Court cannot be oblivious to the fact that the appellant was pursuing may be not diligently the proceedings under Order 9, Rule 13 C.P.C.

11. In the aforesaid background, the order refusing condonation of delay and dismissal passed by the first appellate Court is not sustainable. As such, the order impugned dated 18th September, 2019 passed below Exhibit 1 by the learned District Judge-II, Nashik is hereby quashed and set aside. The said application stands allowed

subject to payment of costs of Rs.25,000/-, which is already deposited in this Court, to which the appellant is entitled to withdraw.

12. The parties shall appear before the learned District Judge on 9th March, 2020 alongwith their written arguments as has been undertaken by them.

13. We expect the learned District Judge to decide the appeal expeditiously and in any case by 31st May, 2020.

14. The appellant shall be tendering private paperbook on the date of the appearance.

15. The appeal stands allowed in above terms.

(NITIN W. SAMBRE, J.)