

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CIVIL APPLICATION NO.9392 OF 2010
IN SAST/10727/2010

GITABAI W/O KISHAN MAHETRE
VERSUS
GOVIND S/O KISHAN MEHETRE AND ORS

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Mr. B. S. Kudale, Advocate for applicant.
Mr. D. K. Kulkarni, Advocate for Respondent No.2 (Absent)

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CORAM : SMT. VIBHA KANKANWADI, J.

DATE : 10.08.2021

ORDER :-

. Present application has been filed for getting the delay of 3284 days condoned in filing second appeal.

2. Present applicant is the original plaintiff No.1. She along with present respondent No.1 (Original Plaintiff No. 2) had filed Regular Civil Suit No.46 of 1983 before learned Civil Judge Junior Division, Basmatnagar for declaration and recovery of possession. The said suit came to be decreed on 06.07.1991. Original defendant had filed Regular Civil Appeal No.94 of 1991, challenging the said decree. Learned Additional District Judge, Basmatnagar dismissed the appeal on 16.01.2001; however, he held that only plaintiff No.2 has right to

recover the possession. Plaintiff No.2 is the adopted son of present applicant. Applicant wants to challenge the said finding; however, there is delay of 3284 days, hence, this application.

3. Heard learned Advocate Mr. B. S. Kudale for the applicant. Learned Advocate for respondent No. 2 is absent. Application came to be dismissed against respondent No. 3. Respondent No. 1, though served remained absent.

4. It has been submitted on behalf of the applicant that applicant was not aware about the said finding given against her. She could not have imagined that her own son would go against her interest. He was looking after the appeal. Applicant is an illiterate lady. Taking disadvantage of said judgment of the first appellate Court, her son had filed Regular Darkhast No.4 of 2001 and warrant of possession has been issued against respondent No.2. That means respondent No.1 would receive the property alone. The illiterate lady has been deprived of her rights in the property. She collected the papers after she came to know the mischief committed by her son and, therefore, the delay is not unintentional. It deserves to be condoned.

5. It is to be noted that the applicant does not say that she was not aware about the filing of the appeal by respondent No.2. She was aware

about the decree that was passed and the appeal that was filed. Now, she says that her son had not told that one of the finding has been given against them. Delay of 3284 days is huge and inordinate. No doubt, she appears to be illiterate lady, but it is hard to believe that her son would not have disclosed the decision to her. She had challenged the fact of issuance of possession warrant in favour of respondent No.1 only, before this Court in Writ Petition No.6076 of 2008. That petition has been dismissed by this Court on 05.11.2009. It was observed by this Court that applicant should raise appropriate proceedings by way of proper procedure. She has not intentionally given the date on which she came to know about the issuance of warrant in favour of her son only. There is no proper, reasonable and sufficient ground for condoning the delay.

6. If at all, the merits could be seen at this stage, then it is to be noted that original plaintiffs were claiming share in the property/share of one Anjubai, who was the mother-in-law of present applicant. When the respondent No.1, though the adopted son of applicant, would be the grandson of Anjubai and being heir from Schedule-I, would get the share. Applicant being daughter-in-law of Anjubai, would be in Schedule-II at the most. When heir from Schedule-I is available, then heir from Schedule-II will not get any share. Therefore, the said finding of the learned First Appellate Court holding that only respondent No.1

will have the right to recover the possession is correct. No substantial question of law would have been raised in the Second Appeal by the applicant.

7. The applicant has failed to show reasonable and sufficient cause for condoning the delay; hence, the application deserves to be dismissed. Accordingly, it stands dismissed.

[SMT. VIBHA KANKANWADI, J.]

scm