

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

6 SECOND APPEAL NO.387 OF 2021
WITH
CA/8748/2021 IN SA/387/2021

SACHIN SUBHASH WANI (SONGIRE)

VERSUS

MANGALABAI BHAUSAHEB MUNDADA

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Mr. V.M. Vibhute, Advocate for the appellant

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CORAM : SMT. VIBHA KANKANWADI, J.

DATE : 27th SEPTEMBER, 2021.

PER COURT :

1 Present appeal has been filed by original defendant. He wants to challenge the order of dismissal of his Miscellaneous Civil Application No.382/2018 by learned District Judge-4, Dhule on 19.03.2020, which was for condonation of delay. The present respondent had filed Regular Civil Suit No.171/2015 before learned 2nd Joint Civil Judge Junior Division, Dhule for possession on the ground of defaulter for arrears of rent. Thus, it is to be noted that the said proceedings were under the Maharashtra Rent Control Act, 1999. It was partly decreed on 03.08.2017. As aforesaid, the original defendant intended to challenge the said decree by way of First Appeal

before the District Court, Dhule, however, since there was delay, he had filed that application for condonation of delay of 13 months and 14 days. It has been rejected. Now, the Second Appeal has been filed, however, it is to be noted that in view of **Dattatraya Krishna Jangam vs. Jairam Ganesh Gore, AIR 1965 BOMBAY 177**, wherein it has been held that - “Section 28 of the Rent Act i.e. (old Bombay Rents, Hotel and Lodging House Rates Control Act, 1947) (present Section 33 of the Maharashtra Rent Control Act) confers exclusive jurisdiction on the special Court in respect of three classes of matters specified therein. It also ousts jurisdiction of any other Court to deal with these matters.” Therefore, in view of the provisions of Maharashtra Rent Control Act, the Second Appeal is not maintainable.

1.1 Further, reliance can be placed on **Shyam Sunder Sarma vs. Pannalal Jaiswal and others, 2005 (1) Mh.L.J., 340** it has been observed that *“Dismissal of an application for condonation of delay in filing appeal amounts to dismissal of the appeal itself and confirmation of the decree appealed against.”*

1.2 Reliance was placed on **Sheodan Singh vs. Daryao Kunwar, AIR 1966 SC 1332** rendered by four Judges Bench of the Hon’ble Supreme Court on the question that arose was, whether the dismissal of an appeal on the ground that the appeal is barred by limitation was a decision in appeal.

Hon'ble Supreme Court held -

“We are, therefore, of opinion that where a decision is given on the merits by the Trial Court and the matter is taken in appeal and the appeal is dismissed on some preliminary ground, like limitation or default in printing, it must be held that such dismissal when it confirms the decision of the Trial Court on the merits itself amounts to the appeal being heard and finally decided on the merits whatever may be the ground for dismissal of the appeal.”

Under such circumstance, dismissal of the application for condonation of delay, in this case, amounts to confirmation of the decree of the Trial Court and, therefore, the Second Appeal is not maintainable.

2 The learned Advocate appearing for the appellant prays that the Second Appeal be converted into Writ Petition. However, it cannot be done so. At the most, he can withdraw the Second Appeal with liberty to file any other proceeding as would be advised. Accordingly, he prays for the withdrawal of Second Appeal to take appropriate course. Accordingly, the Second Appeal stands disposed of. Pending Civil Application No.8748 of 2021 stands disposed of.

(Smt. Vibha Kankanwadi, J.)