

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CIVIL APPLICATION NO.13080 OF 2019
IN SAST/31694/2019

SATYABHAMA ASHOK PAWAR

VERSUS

MADAN VITTHAL GAMBHIRE

...

Mr. S.V. Dixit, Advocate for the applicant

Mr. N.C. Garud, Advocate for the sole respondent

...

CORAM : SMT. VIBHA KANKANWADI, J.

RESERVED ON : 14th SEPTEMBER, 2021.

PRONOUNCED ON : 27th SEPTEMBER, 2021.

ORDER :

1 Present application has been filed for getting delay of 584 days condoned in filing Second Appeal. Present appellant is the original defendant in Regular Civil Suit No.38/2008, which was filed by the present respondent for declaration and permanent injunction. Present appellant had also filed Regular Civil Suit No.147/2007 against the present respondent for permanent injunction. Both the suits were tried together by learned Civil Judge Junior Division, Jamkhed, Dist. Ahmednagar. The suit filed by the

present appellant i.e. Regular Civil Suit No.147/2007 came to be decreed on 12.04.2010. The present respondent was restrained from disturbing the possession of the plaintiff over the suit land. The suit filed by the present respondent i.e. Regular Civil Suit No.38/2008 was partly allowed on 12.04.2010. He was declared to be the owner of Gat No.494 to the extent of 80 R, however, his prayer for injunction was rejected.

2 Present appellant only challenged the part of the Judgment and Decree passed in Regular Civil Suit No.38/2008, which had gone against her in Regular Civil Appeal No.234/2014. The said appeal was heard by learned District Judge-10, Ahmednagar and was dismissed on 28.11.2017. Now, the applicant intends to challenge the said Judgment and Decree passed in Regular Civil Appeal No.234/2014, however, there is delay, as aforesaid, of 584 days. Hence, this application under Section 5 of the Limitation Act.

3 Heard learned Advocate Mr. S.V. Dixit for the applicant and learned Advocate Mr. N.C. Garud for the sole respondent. In order to cut short, it can be said that they have argued in support of their respective contentions.

Reply has been given by the respondent. The learned Advocate for the respondent strongly objected the application and submitted that the

delay is huge and inordinate and it has not been properly, much less sufficiently explained.

4 It is to be noted that the applicant is a lady, doing agriculture and coming from a rural background. No doubt, the delay appears to be inordinate, but she has tried to explain that when her suit came to be decreed, she was rest assured, but when the suit filed by the defendant came to be partly allowed and the present respondent was declared to be the owner of the suit property in respect of which even the applicant had filed the suit, she had challenged that decree before the First Appellate Court. She also states that she was thereafter under misunderstanding that her title to the suit property has not been interfered with and the respondent had not filed any appeal, challenging the Judgment and Decree in Regular Civil Suit No.147/2007, she took that as it has achieved finality. However, later on, the respondent has filed suit for recovery of possession and, therefore, she wants to challenge the said Judgment and Decree passed by the First Appellate Court. This misunderstanding appears to be the justified reason or reasonable ground for the applicant and, therefore, delay deserves to be condoned. However, the inconvenience that would be caused to the respondent needs to be compensated in terms of money. Hence, following order.

ORDER

- 1 Application stands allowed and disposed of.
- 2 The delay caused in filing Second Appeal stands condoned, subject to deposit of costs of Rs.5,000/- (Rupees Five Thousand only), within a period of one month, from today.
- 3 After the costs is deposited, it be given to the respondent.
- 4 Registry to verify and register the Second Appeal.

(Smt. Vibha Kankanwadi, J.)

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