

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

26 CIVIL APPLICATION NO.795 OF 2014
IN SAST/34084/2013

TRIVENABAI PUNJABRAO DINDE AND OTHERS
VERSUS
VIJAY HARIBHAU PUNDGE

...
Advocate for Applicants : Mr. Patil Hanmant V. & Mr. A. N. Patale
Advocate for Respondent : Mr. S V Natu
...

CORAM : SMT. VIBHA KANKANWADI, J.

DATE : 02.08.2021

ORDER :-

. Present application has been filed for condoning the delay of 1734 days in filing second appeal.

2. Heard learned Advocate Mr. H. V. Patil and Mr. A. N. Patale for applicants and learned Advocate Mr. S. V. Natu for the respondent.

3. It has been vehemently submitted on behalf of the applicants that the applicants are intending to file second appeal challenging the judgment and decree dated 12.12.2008 passed by the learned District Judge-11, Hingoli in Regular Civil Appeal No.53 of 2000, whereby the appeal filed by the present respondent came to be allowed. The learned first Appellate Court had reversed the judgment and decree dated

02.09.2000 in Regular Civil Suit No.73 of 1991 passed by learned Civil Judge Junior Division, Kalamnuri. The said suit was for specific performance of the contract filed by the present respondent. It was dismissed, however, it came to be decreed in appeal. The applicants are the daughters of the original land owner and original defendant No.1. In fact, after marriage, the applicants are residing with their husbands at respective villages. There is no male member who is looking after the suit land. The applicants are having no knowledge of legal proceedings and pendency of appeal before the learned District Court. They came to know about the same when they received the notice of execution of the sale deed. They had collected the certified copies thereafter. Their Advocate had also not communicated the decision in the appeal to them. Therefore, there is good ground to condone the delay. Substantial questions of law are arising in the second appeal.

4. Per contra, learned Advocate for the respondent strongly opposed the application submitting that the ground that has been shown by the applicants cannot be said to be sufficient much less reasonable. There is inordinate delay. Applicants had every knowledge about the pendency of the appeal, especially present applicant Nos.1 and 2. They were majors when they had filed the appeal. The learned Trial Judge on his surmises and conjectures going against the evidence that was led by the

original plaintiff had dismissed the suit, however, entire evidence has been properly considered and appreciated by the learned first Appellate Judge. No substantial questions of law are arising in this case as the plaintiff had proved the execution of agreement to sale by the original owner in his favour. Since it was agreement to sale an agricultural land i.e. immovable property, the discretion of grant of specific performance has been properly exercised.

5. At the outset, it is to be noted that even before the first Appellate Court, the respondents were the only persons i.e. ladies, who were the respondents. Out of them, respondent Nos.2 and 3 i.e. present applicant Nos.1 and 2 were major. They were represented by Advocate. Except their statement that the decision in the appeal was not communicated them by their Advocate, there is nothing. It cannot be presumed that the Advocate would not have discharged his professional duty. The appeal was decided on 12.12.2008 and the applicants are coming with the case that they came to know about it only in the year 2013. In fact, they have intentionally not given the date of knowledge. They have stated that when applicant No.1 received the notice about the execution of the sale deed through Court, they got the knowledge and then applied for the certified copies on 13.11.2013. Therefore, there is suppression of fact as to when they had received notice in the execution proceedings.

Further, along with the affidavit-in-reply, the copy of the service report has been produced by the respondent. It shows that applicant No.1 - Trivenabai was served with the notice on 28.08.2012, applicant No.2 – Kanchan was served on 27.12.2012, applicant No.3 – Mangalbai was served on 08.10.2012 and applicant No.4 - Maltibai was served on 10.01.2013. These are the numbers with the execution Court, but they are in respect of present applicants. Therefore, when applicant No.1, who appears to be defendant No.2 in the execution proceedings, was served on 28.08.2012, yet there is absolutely no reasonable ground shown as to why she was not approached the Advocate prior to 07.12.2013. This inordinate delay even after the knowledge of about one to one year three months approximately has not been explained by the applicants and, therefore, it cannot be said that they have given reasonable ground much less sufficient to condone the delay. Hence, the application stands rejected.

[SMT. VIBHA KANKANWADI, J.]

scm