

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

SECOND APPEAL NO.535 OF 2017

Mohan Shetiba Wagh

..Appellant

Vs.

The State of Maharashtra & Ors.

..Respondents

Mr. Rahul S. Kadam, for the Appellant.

Mr. A. R. Patil, AGP for the Respondent Nos.1 to 4.

Mr. Tushar Sonawane a/w. Mr. Prashant S. Hagare, for the Respondent No.5.

CORAM : C.V. BHADANG, J.

DATE : 02nd MARCH 2021

PC.

. The challenge in this appeal is to the order dated 26/10/2016 passed by the learned District Judge at Baramati in MCA No.73/2015. By the impugned order, the learned District Judge has refused to condone a delay of 1172 days in filing an appeal against a consent decree.

2. The brief facts are that the respondent No.5 had filed RCS No.303/2012 against the appellant and respondent Nos.1 to 4 for specific performance of a contract of sale under which the suit property was allegedly agreed to be sold to respondent No.5 for a

consideration of Rs.2,60,000/-. It appears that the suit was disposed of on the first date of hearing i.e. on 5/5/2012 on the basis of a compromise pursis at Exh.15.

3. The case made out by the appellant is that he being illiterate was not aware of the contents of the compromise pursis and he was not given proper legal advice. It was contended that the appellant was made to believe that under the compromise, the appellant was required to refund an amount of Rs.1 Lakh to the respondent No.5. According to the appellant, it was essentially a money lending transaction.

4. Be that as it may, after the suit was decreed on 5/5/2012, the fifth respondent sought execution of a decree in Regular Execution Case No.16/2015. According to the appellant, it is only upon receipt of notice in the Execution Case that he became aware of the nature of the decree passed, in the civil suit. It appears from the record that the appellant did not initiate any application under Order XXIII Rule 3 of CPC. However, he sought to challenge the said decree in an appeal in which there was a delay as aforesaid.

5. The application was opposed on behalf of the fifth respondent inter alia on the ground that there was a gross delay.

6. The learned District Judge by the impugned order has refused to condone the delay. Hence, this appeal.

7. I have heard the learned counsel for the appellant and the learned counsel for the respondents. Perused record.

8. It is submitted by the learned counsel for the appellant that the suit was allegedly compromised on the very first date of hearing which itself according to the learned counsel is a suspicious circumstance. Secondly, it is submitted that the appellant was not properly advised and was given to understand that the compromise is in the nature of refund of an amount of Rs.1 Lakh to the respondent No.5. It is next submitted that the appellant applied for certified copy after the receipt of the notice in the execution case and the certified copy was delivered on 24/6/2015 after which the appeal was filed. It is submitted that the appellant in the interregnum was unwell, in support of which, the medical certificate of Dr. Vikas Lonkar was produced on record. It is submitted that thus the appellant has made out sufficient cause for condonation of

delay and the First Appellate Court was in error in refusing to condone the delay.

9. The learned counsel for the respondent No.5 has supported the impugned order. It is submitted that the appellant was represented by an Advocate and the appellant did not take any steps in the matter for over a period of three years and four months, if at all, there was any misconception about the nature of the compromise entered into.

10. I have carefully considered the circumstances and the submissions made and I do not find that the appeal raises any substantial question of law.

11. The suit was decreed on 5/5/2012 on the basis of a compromise pursis. The case made out by the appellant, as noticed earlier, is that he came to know about the nature of the decree passed only upon receipt of notice in Regular Execution Case No.16/2015, after which the certified copy was applied for and was delivered on 24/6/2015. The application for condonation of delay came to be filed on 7/9/2015 resulting into a delay of 1172 days. The appellant has placed reliance on the medical certificate issued

by Dr. Vikas Lonkar which shows that the appellant was under treatment of Dr. Lonkar from 15/11/2014 to 5/9/2015 for diabetes and high blood pressure. The learned District Judge has noticed and to my mind rightly so that the certificate does not show that the appellant was an indoor patient and was prevented from attending to his daily chores so as to show inability to take steps in filing of the appeal.

12. The Supreme Court in the case of **Esha Bhattacharjee v/s. Managing Committee of Raghunathpur Nafar Academy and Ors. (2013) 12 SCC 549** after taking note of several decisions holding the field, has interalia held that although the Court can take a liberal view in the matter of condonation of delay of short duration, the case where there is a gross or inordinate delay requires stricter approach. It has further been held that where the grounds in support of the application for condonation of delay are unacceptable or fanciful, the delay cannot be condoned so as to expose the adversary to a further litigation.

13. In my considered view, having regard to the well established principles and looking to the extent of delay and the reasons shown, the appellant has failed to show 'sufficient cause', for condonation of

delay. The impugned order therefore does not suffer from any infirmity. The appeal does not raise any substantial question of law. In the result, the second appeal is dismissed with no order as to costs. A decree be drawn accordingly. All pending civil applications stand disposed of.

C.V. BHADANG, J.