

Bhogale

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
CIVIL APPLICATION NO.717 OF 2018
WITH
SECOND APPEAL ST. NO.13178 OF 2018**

Radhabai Maruti Jadhav .. Applicant

vs.

Sangita Maruti Jadhav and ors. .. Respondents

Mr. Pradeep S. Gole for the Applicant.

Ms. Rati S. Sinhasane I/b. Mr. Umesh Mankapure for Respondent
Nos.1 and 2.

**CORAM : M.S.KARNIK, J.
DATE : JULY 3, 2021
(THROUGH V.C.)**

P.C.

Heard learned counsel for the Applicant.

2. This is an Application for condonation of delay of 3 years and 296 days in filing the present Appeal. My attention is invited by learned counsel for the Applicant to the reasons stated in the delay condonation application. The suit for partition was filed by Respondent Nos.1 and 2. The suit for partition came to be decreed. The Appellant claimed that she is entitled to a share in the suit property along with Defendant Nos.3, 11 and 12 who are her children. However, it is pointed out that the Appellant being the second wife, the Trial Court held that she is not entitled to a share in the suit property. Even the Defendant Nos.3, 11 and 12 who are her children were denied a share in the suit property.

3. The Appellant approached the First Appellate Court by way of filing Regular Civil Appeal. There was a delay of about 1 year and 6 months in filing the Appeal and therefore Miscellaneous Civil Application No.279 of 2010 came to be filed before the First Appellate Court. It was much later, she realised that the said Application was rejected on 03.04.2014 by the First Appellate Court. Hence this Appeal.

4. It is averred that the Applicant is not educated. The Applicant is 68 years old and for the last more than 6 years, she is suffering from cervical spondylosis and is under the treatment of Dr. Alok Narde, Consulting Physician at Taluka Khanapur, District Sangli. The certificate dated 04.04.2018 is enclosed at Exhibit 'B'. It is pointed out that the present Respondent Nos.30 and 31 (Defendant Nos.11 and 12) viz. her daughters are married and reside at their matrimonial home. Her son i.e. Respondent No.29 is unemployed and not looking after her. The relations between them are strained.

5. Learned counsel for the Respondent Nos.1 and 2 (original Plaintiffs) vehemently opposed the Application for condonation of delay. She submitted that the approach of the Appellant at all stages has been casual. She submits that even before the First Appellate Court there was a delay of 1 year and 6 months in filing the Appeal. She further submits that the explanation given by the Applicant in the delay condonation application cannot be regarded as sufficient cause shown to condone the delay. She therefore

submits that the Application may dismissed as the delay is gross and in any case there is no reason to interfere with the delay as admittedly, even on merits the Applicant is the second wife and therefore not entitled to a share in the ancestral property.

6. For the delay of 1 year and 6 months in filing the Appeal, the First Appellate Court did not find the explanation for condoning the delay to be satisfactory. Even so far as filing of the present Appeal is concerned, there is delay of 3 years and 296 days. For the reasons stated in the Application, considering that the Applicant is 68 years of age and suffering from illness, though undoubtedly the filing of the Appeal is belated, but it is not as if the delay does not deserve to be condoned in the interest of justice as the Applicant can very well be saddled with cost to account for the delay.

7. The delay is condoned. The present Civil Application is allowed subject to cost of Rs.3,000/- to be paid by the Applicant to the Govind Vrudhashram, At Post Yelavi, Taluka Tasgaon, District Sangli. Learned counsel for the Respondent Nos.1 and 2 graciously submitted that she has no objection if the cost is paid to the old age home.

8. Civil Application is allowed and disposed of.

(M.S.KARNIK, J.)