

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO. 75 OF 2017

WITH

CIVIL APPLICATION NO. 202 OF 2017

Smt. Pushpa Sayaji Gaikwad	]	
Age : 57 years, Occupation : Agriculturist/Housewife	]	
Residing at : E 7/8, Ankur Park I Society,	]	
Maharshinagar, Pune – 411 037.	]	... Appellant [Org. Defendant]

V/s.

Smt.Nirmala Pandurang Gaikwad	]	
Age : 60 years, Occupation : Agriculturist/Housewife	]	
Residing at : 163/165, Flat No.10,	]	
Vrundawan Apartment, Mukund Nagar,	]	
Pune – 411 037.	]	... Respondent [Org. Plaintiff]

Mr.S.C. Wakankar for Appellant.
Mr.Prafulla Shah i/b. Mr.K.P. Shah for Respondent.

CORAM : A.S. GADKARI, J.

**RESERVED ON : 27th September 2021.
PRONOUNCED ON : 29th September 2021.**

ORAL JUDGMENT :

1. Appellant, original Defendant, has preferred the present Appeal against the Judgment and Order dated 17th October 2016 passed in Civil Misc. Appeal No. 451 of 2016 by the learned Adhoc District Judge-1, Pune, thereby

rejecting the said application for condonation of delay of 589 days in preferring an appeal against the Judgment and Order dated 10th June 2014 passed in Regular Civil Suit No. 4936 of 2012 (Old Special Civil Suit No. 2769 of 2010), decreeing the said Suit filed by the Respondent herein.

2. Heard Mr.Wakankar, learned counsel for the Appellant and Mr.Shah, learned counsel for the Respondent. Perused record.

3. Record discloses that, the Appellant herein was original Defendant in Regular Civil Suit No. 4936 of 2012 (Old Special Civil Suit No. 2769 of 2010) filed by the Respondent for removal of encroachment committed by the Appellant and for compensation, before the 19th Civil Judge Junior Division, Pune. The Trial Court by its Judgment and Order dated 10th June 2014 was pleased to decree the said Suit. It appears that, in the said Suit the Appellant did not remain present despite service of summons and the said Suit was decreed as uncontested Suit.

4. Feeling aggrieved by the said Judgment and Order dated 10th June 2014 passed by the Trial Court, the Appellant preferred appeal in the Court of District Judge at Pune. There was a delay of 589 days in filing the said appeal and therefore the Appellant filed Civil Misc. Application No. 451 of 2016 for condonation of it. The Appellate Court by its impugned Judgment and Order dated 17th October 2016 has rejected the said application. In this brief premise, the present Second Appeal is filed under Section 100 of Civil Procedure Code.

5. Mr.Wakankar, learned counsel for the Appellant submitted that, initially the Respondent had submitted its plaint before the Civil Judge Senior Division, Pune (for short, 'C.J.S.D.') and it was numbered as Special Civil Suit No. 2769 of 2010. That after change in pecuniary jurisdiction, the said Suit was transferred to the Court of Civil Judge Junior Division, Pune (for short, 'C.J.J.D.') for trial and it was numbered as Regular Civil Suit No. 4936 of 2012. The Appellant did not receive notice of renumbering of the said Suit and/or its transfer from the file of C.J.S.D. to C.J.J.D.. He submitted that, it was necessary for the Trial Court to issue a notice to the Appellant after transfer of the said Suit on its file. In support of his contention, he relied upon two decisions of the learned Single Judge of this Court, namely, (i) Ratilal Jivanbhai Lalji Vs. Kuvarben Chabildas Patel & Ors., 2009 1 All MR 654 and (ii) Pusaram Sakharam Chavan Vs. Jyoti @ Savitri Dnyanoba Badade, 2012 4 AllMR 808 : 2012 5 MhLJ 197. He submitted that, it is the said substantial question involved in the present Second Appeal.

6. Per contra, Mr.Shah, learned counsel for the Respondent drew my attention to the record of the present Appeal and submitted that, after transfer of the said Suit from the file of C.J.S.D. to C.J.J.D., the Appellant had appeared before the Trial Court and had filed an application for filing Written Statement, which was allowed by imposing cost by the Trial Court. Therefore the contention of the Appellant that, she did not receive notice from the Trial Court of transfer

of Suit is a sham plea adopted by her. He therefore prayed that, the present Appeal may be dismissed.

7. Minute perusal of record and in particular the roznama of the trial Court indicates that, Special Civil Suit No. 2769 of 2010 was transferred vide District Court Order No.M/126-12, dated 10th January 2012 from the file of C.J.S.D. Pune to C.J.J.D. Pune. The heading/title number of Special Civil Suit No. 2769 of 2010 was therefore circled by the concerned Court Official indicating that, the said number was no more in existence on the file of C.J.S.D.. The said Suit was thereafter numbered as Regular Civil Suit No. 4936 of 2012 on the file of C.J.J.D..

8. Record further reveals that, on 19th October 2012, the Appellant had filed an application below Exh.15 for filing Written Statement in the Court of C.J.J.D. Pune. That on 26th April 2013 the Trial Court passed an Order below Exh.15 and directed the Appellant to pay cost of Rs.500/- to the Respondent/Org. Plaintiff for filing Written Statement belatedly. The Trial Court in para No.4 of its Judgment and Order dated 10th June 2014 has observed that, as the Appellant did not pay cost for filing Written Statement with delay, by an Order dated 11th July 2013 passed below Exh.1, the said Suit was directed to be proceeded without Written Statement of the Appellant.

9. It is thus clear that, the Appellant was having due notice and knowledge of transfer of the said Suit (Special Civil Suit No. 2769 of 2010) from

the Court of C.J.S.D. Pune to the Court of C.J.J.D. Pune (Regular Civil Suit No. 4936 of 2012) on or before 19th October 2012. In this background, the Appellant in its Civil Misc. Application No. 451 of 2016 has raised not only a sham but a palpably false plea that, the Appellant did not receive any notice of renumbering of the suit nor received the notice of transfer of the suit from C.J.S.D. Pune to C.J.J.D. Pune. The said ground has also been raised before this Court in para No.6 of Synopsis and Ground No.(d) of the present Appeal.

10. As noted earlier, it was the only ground raised by the Appellant for condonation of such an inordinate and colossal delay in preferring the appeal before the First Appellate Court. Learned Advocate for the Appellant repeatedly argued the said point of notice of transfer of suit filed by the Respondent was not given to the Appellant. As noted in the forgoing paragraphs, the Appellant had not only due notice but sufficient knowledge of transfer of the suit, which fact can be clearly discerned from the conduct of the Appellant, who had appeared before the Trial Court after transfer of the said suit on 19th October 2012. Therefore, the contention raised by the Appellant is a sham plea adopted by him before this Court also. It is to be noted here that, once the Appellant/litigant appears before the concerned Court after transfer of his/her case, no separate notice is thereafter necessary to be issued to him/her by the concerned Court, giving intimation that, his/her case has been transferred to the said Court.

The citations referred to and relied upon by the learned Advocate for the Appellant are therefore of no avail to him, as the facts involved in the said cases differ from the case in hand.

11. In view of the above, this Court finds that, no substantial question of law is involved in the present Appeal.

Appeal being *dehors* of merits is accordingly dismissed.

12. In view of dismissal of the Appeal, nothing survives in the Civil Application No.202 of 2017 and is accordingly disposed off.

13. In view of palpably sham plea adopted by the Appellant not only before the First Appellate Court but before this Court also, this Court was of the view that the Appellant may be saddled with exemplary cost, however at the repeated and profused pleading by the learned Advocate for the Appellant, this Court has refrained itself from doing so.

[A.S. GADKARI, J.]