

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

**SECOND APPEAL NO.181 OF 2022
WITH
CIVIL APPLICATION NO.5049 OF 2022**

Usha Sunil Gorde,
Age:47 years, Occ. Agri.,
r/o. Kukana, Tq.Newasa,
Dist. Ahmednagar

..Appellant

Vs.

Sharda Denial Gorde,
Age : 60 years, Occ. Agri.,
r/o. Kuka, Tq. Newasa,
Dist. Ahmednagar

..Respondent

Mr.Navin S. Shah, Advocate h/f. Mr.K.N.Lokhande, Advocate for
appellant

Mr.H.D.Deshmukh, Advocate for respondent

**CORAM : R.G. AVACHAT, J.
DATE : JUNE 13, 2022**

ORDER :-

Heard learned counsel for the parties.

2. This Second Appeal has been moved by original defendant in a suit preferred by the respondent/plaintiff for redemption of mortgage. The trial Court had decreed the suit. The appellant herein

had preferred a first appeal along with an application for condonation of delay. Delay was of 186 days.

3. Learned counsel for the the appellant submits that the appellant/defendant was not aware of the decree having been passed in the suit. According to him, no written statement could be filed in the suit. The first appellate court refused to condone the delay in preferring the first appeal. The reason given by the first appellate Court was that the appellant was not diligent in prosecuting the suit. The Court found the appellant to have been in the know of the decree passed in the suit.

4. Learned counsel for the respondent/plaintiff has relied on a judgment of this Court in the case of **Ramchandra Nathu Ghadage and ors. Vs. Rajaram Nathu Ghadage, since deceased, by his L.Rs. and ors., 2007(5)Bom.C.R. 354**, wherein a substantial question of law based on somewhat similar facts, has been answered which favours the respondent herein.

5. Considered the submissions advanced. The subject-matter is agricultural land, said to have been given on mortgage

under a registered deed titled as 'sale deed'. This Court has gone through the said document. It would be for the first appellate court to interpret the said document. Interpretation of the document based on its contents, is necessarily a substantial question of law. Instead of doing this exercise in this Second Appeal, let the matter be decided by the first appellate Court on its own merits. Although the appellant herein had not filed written statement in the suit before the trial Court, he makes a statement that he would participate in the first appeal and would not urge for remand of the suit. He would have to be given an opportunity to make submission as to whether the document in question was out and out sale with an option to repurchase or mortgage by conditional sale. That exercise can very well be done by the first appellate court after going through the contents of the said document by giving opportunity to both the parties to put forth their submissions.

6. Since immovable property was involved in the matter and the appellant herein did not have an opportunity, for one or the other reason, to contest the suit and the first appeal as well, this Court is inclined to allow present Second Appeal remanding the matter back to the first appellate Court, which shall decide the same

on its own merits, after giving full opportunity to the parties thereto and assuming that the appellant herein has contested the suit before the trial Court, particularly, disputing nature of the document. The Second Appeal is, thus, allowed and disposed of accordingly with costs of Rs.5,000/- (Rupees Five Thousand) to be paid before the first appellate Court. The first appellate Court is requested to decide the appeal within a period of eight months from the date of receipt of a copy of this order.

7. In view of disposal of the Second Appeal, the Civil Application stands disposed of.

[R.G. AVACHAT, J.]

KBP