

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

**REVIEW APPLICATION (CIVIL) NO. 174 OF 2022
IN SECOND APPEAL/237/2020**

**PARVATIBAI NAVALSINGH PATIL
VERSUS
INDUBAI VIKRAM PATIL AND ANR**

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Advocate for the Applicant : Ms. Kirti A. Deshpande h/f Mr. Bhokarikar M.M.
Advocate for the Respondent No. 1 : Mr. Satyajit S. Bora

CORAM : MANGESH S. PATIL, J.

DATE : 09.12.2022.

PER COURT :

Heard the learned advocate Mr. Bora who appears for the Indubai-appellant in second appeal, who was the defendant No. 2 before the trial court in a suit for partition and separate possession filed by Parvatibai who is the applicant herein.

2. It appears that against the judgment and order passed by the trial court the original defendant No. 1 Kalpanabai intended to prefer an appeal before the District Court under Section 96 read with Order XLI of the Code of Civil Procedure. Since there was delay, she preferred an application for condonation of delay. The lower appellate court by the judgment and order under challenge in this second appeal refused to condone the delay and rejected the application preferred by Kalpanabai. However, Kalpanabai herself did not seek to challenge the order of the District Court refusing to condone the delay. Instead Indubai who was the defendant No. 2 preferred the second appeal.

3. Admittedly, Indubai was not the appellant or the applicant before the District Court and had never sought to challenge the judgment and decree

passed by the trial court. However, she preferred the second appeal and by the order under review it has been allowed.

4. *Ex facie*, when Indubai had not sought to challenge the judgment and decree before the District Court which was an application and the appeal filed by Kalpanabai, Indubai could not have preferred the second appeal. It appears that this court under a mistaken belief that Indubai had approached the lower appellate court has decided the second appeal. To repeat, since Indubai had not sought to challenge the judgment and decree before the District Court, she was not competent to challenge the order passed by it by preferring a second appeal.

5. It is clearly an error apparent on the face of the record sufficient for undertaking a review. The review application is therefore allowed. The judgment and order under review is recalled and the second appeal is dismissed.

6. Needless to state that it would always be open for Kalpanabai to challenge the judgment and order of the District Court refusing to condone the delay. Obviously, the question of limitation will persist.

(MANGESH S. PATIL, J.)

mkd/-