

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

SECOND APPEAL NO. 248 OF 2021

1. Modu Sonsing Vanjari
Age : 48 years, Occu. Agriculture
2. Dhondu Sonsing Vanjari,
Age : 42 years, Occu. Agriculture

All R/o. Nandarkhe, Tq. & Dist. Nandurbar.
3. Hira Shankar Vanjari,
Since deceased through L.Rs.
- 3A. Jesuda w/o Hira Vanjari @ Rathod,
Age : Major, Occu. Household,
R/o. Village Nandarkhe,
Tq. & Dist. Nandurba.
- 3B. Sushilabai Duba Chavhan,
Age : Major, Occu. Household,
R/o. Village Nandarkhe,
Tq. & Dist. Nandurba.
- 3C. Sangitabai Bapu Pawar,
Age : Major, Occu. Household,
R/o. Village Nandarkhe,
Tq. & Dist. Nandurba.
- 3D. Narmada Sarichand Pawar,
Age : Major, Occu. Household,
R/o. Village Nandarkhe,
Tq. & Dist. Nandurba.
- 3E. Lalita Chondur Pawar,
Age : Major, Occu. Household,
R/o. Village Nandarkhe,
Tq. & Dist. Nandurba.
- 3F. Reshma Anil Rathod,
Age : Major, Occu. Household,
R/o. Village Nandarkhe,
Tq. & Dist. Nandurba.

- 3G. Jay s/o Hira Vanjari @ Rathod,
Age : Major, Occu. Household,
R/o. Village Nandarkhe,
Tq. & Dist. Nandurba.
- 3H. Vijay s/o Hira Vanjari @ Rathod,
Age : Major, Occu. Household,
R/o. Village Nandarkhe,
Tq. & Dist. Nandurba.

...Appellants

Versus

1. Kamalaben Basilal Patil,
Age : 72 years, Occu. Agriculture,
R/o. Dadchil, Tq. Shahada,
Dist. Nandurbar.
2. Hiraben w/o Shankar Patil,
Since died through her LRs
 - 2a. Shankar Jagdish Patil,
Age : 80 years, Occu. Agriculture
 - 2b. Sushila Shankar Patil,
Age : 52 years, Occu. Household
 - 2c. Jayashri w/o Ambalal Patil,
Age : 57 years, Occu. Household
 - 2d. Harsha Sanjay Patil
Age : 52 years, Occu. Household
 - 2e. Tikbai @ Yogita d/o Shankar Patil,
Age : 45 years, Occu. Household

All R/o. Nizar, Dist. Tapi, Gujrat, presently
R/o. Vrundavannagar, Tq. Shahada, Dist. Nandurbar.

3. Meenaben w/o Suresh Patil,
Age : 67 years, Occu. Agriculture
R/o. Near K. D. Patil Vrundavannagar,
Shahada, Tq. Shahada, Dist. Nandurbar.
4. Kailas Uttam Patil,
Age : Major, Occu. Agriculture,

R/o. Girivihar Housing Society,
Nandurbar, Tq. & Dist. Nandurbar.

..Respondents

....
Mr. Ajinkya A. Joshi h/f Mr. S. V. Natu, Advocate for the appellants
Mr. Amit S. Sawale, Advocate for respondent no. 1
....

AND
CIVIL APPLICATION NO. 8073 OF 2021
IN
SECOND APPEAL NO. 248 OF 2021

Modu Sonsing Vanjari and others

....Applicants

Versus

Kamalaben Basilal Patil and others

....Respondents

....
Mr. Ajinkya A. Joshi h/f Mr. S. V. Natu, Advocate for the appellants
Mr. Amit S. Sawale, Advocate for respondent no. 1
....

CORAM : RAJESH S. PATIL, J.

RESERVED FOR JUDGMENT ON : NOVEMBER 28TH, 2022
JUDGMENT PRONOUNCED ON : DECEMBER 08TH, 2022

JUDGMENT : -

1. This Second Appeal is filed by subsequent purchaser challenging the judgment and order passed by the District Judge thereby not condoning the delay of approximately 3½ years in filing the appeal before the District Court.

FACTS :

2. The plaintiff in the lower Court, who is respondent no. 1

herein, had filed suit for partition, declaration and separate possession against her two sisters. The said suit was decreed and the trial Court had granted a decree of 1/3rd share in the suit property to the plaintiff therein and so also 1/3rd share to each of the defendants – two sisters. So also, the trial Court declared that the sale deeds executed by defendant no. 1 in favour of defendant no. 5 and sale deed executed by defendant no. 2 in favour of defendant no. 3 is not binding on the share of plaintiff in the suit property. The said decree of trial Court was passed on 22.01.2015. The present appellants were represented by their advocate in the trial Court.

3. Thereafter, since there was no appeal filed, the original plaintiff filed execution application before the trial Court. The present appellants, who are the subsequent purchasers, appeared in the execution application proceedings, however, they did not file any kind of appeal challenging the judgment and decree of the trial Court. Much later on 30.07.2018, the present appellants / subsequent purchasers filed appeal along with application for condonation of delay. The said application for condonation of delay was heard and dismissed by the learned appellate Court. Hence, the appellants herein have preferred the present second appeal challenging the order of not condoning the delay of 3½ years.

SUBMISSIONS : -

4. The advocate for the appellants submitted before this Court that even though the appellants had engaged a lawyer in the lower court there was no communication between them, therefore, the present appellants were not able to take steps within the prescribed time. So also, it has been argued that out of the three appellants, appellant no. 3 (original defendant no. 6) was looking after the proceedings on behalf of the three appellants who are subsequent purchasers. However, he fell ill due to Malaria and, therefore, he was not able to take steps. Doctor's certificate in that behalf was enclosed with the application for condonation of delay. As far as other two appellants are concerned, they used to travel to Gujarat from Maharashtra for work purpose, hence, they were not able to take any kind of steps.

5. It is further argued by the appellants' advocate that delay was not purposeful and the courts should not be hyper technical in such matters and the delay should have been condoned and the appeal should have been heard on merits. The advocate for the appellants referred to two judgments to buttress his submissions,

- (i) **Ram Nath Sao Alias Ram Nth Sahu and others Versus Gobardhan Sao and others** reported in (2002) 3 SCC 195, more particularly, referred paragraph nos. 7 to 12 of

the said judgment.

(ii) **Dr. Yashwantrao Bhaskarrao Deshmukh Versus Raghunath Kisan Saindane** reported in 2021 SCC OnLine SC 914.

. He further argued that in both the aforesaid judgments, the Supreme Court held that delay in filing an appeal should not be taken more technically and approach should be more lenient towards the parties and *bona fides* of the parties should always be taken into consideration. Hence, he prayed that the present second appeal be considered and be allowed. He also furnished a list of grounds to be framed on “substantial question of law” for admitting the Second Appeal.

6. Advocate appearing for the respondents submitted that the appeal has been filed only by subsequent purchasers and no appeal has been filed by the original defendants (sisters). The trial Court by its judgment and order has protected the original plaintiff only as far as her 1/3rd share in the suit property. The advocate for the respondent also furnished certified copy of Roznama of executing Court. He further argued that the submissions of the appellants before the lower Court and before this Court are that they got knowledge about the decree passed by the trial Court only on 09.07.2018 when they received copy of

execution notice is false *per se*, since from the bare perusal of the 'Roznama' of the executing Court it can be seen that the appellants before this Court had appeared along with their Advocate in the executing Court as early as on 02.07.2016. Therefore, the parties who have made false statement before this Court should not be shown any kind of leniency.

7. He further argued that the medical certificate tendered before the appellate Court is bogus as the certificate does not contain any date. So also, even for the sake of argument it is presumed that medical certificate is genuine, even then the period of illness of appellant no. 3 is barely 100 days and the delay caused in filing the appeal is more than 1000 days.

8. Counsel for the respondent further argued that no specific dates have been mentioned in the delay condonation application. It has not been stated as to when the appellant nos. 1 and 2 were in Gujarat in the 1000 days mentioned in the application for condonation of delay.

9. It is further argued that the judgment of Ram Nath Sao (supra) does not help the appellant as paragraph no. 13 of the said judgment is against the appellants. So also, it is stated that with ulterior motive the name of lower Court's advocate is dragged into and

allegation of negligence has been made against him. However, the appellants have not taken any action against their advocate engaged in lower Court. The advocate for the respondents relied upon judgment of **Majji Sannemma alias Sanyasirao v. Reddy Sridevi** reported in AIR 2022 SC 332, more particularly, paragraph nos. 6 to 7.5 thereof. Advocate for the respondent stated that, in the said judgment, it is clearly stated, imposing condition like cost is not justifiable in condoning the delay when there is no sufficient cause made out, then that would amount to violation of statutory principles showing utter disregard to legislature. He further prayed that no substantial question of law arises in this second appeal and the second appeal should be dismissed. He further stated that after filing the suit considerable period has gone and the plaintiff at least now deserves to enjoy the fruits of the decree i.e. 1/3rd share of her in the suit property.

ANALYSIS :

10. I have heard the submissions of both the parties, and carefully gone through the application for condonation of delay filed in the lower Court and the judgments cited by both the parties.

11. The reasons cited by the appellants in the application for condonation of delay are three fold; (i) that appellant no. 3 used to take care of the litigation on behalf of the three appellants and when he fell

ill, they were not able to file the application for delay condonation in time. (ii) Appellants no. 1 and 2 had to travel to Gujarat for work, hence, they were not able to take steps within time. (iii) Advocate did not give them any information about passing of decree and they got knowledge about passing of decree only on 09.02.2018 when they received notice in execution proceedings.

12. Advocate for the appellants also referred to two medical certificates of appellant no. 3 who was original defendant no. 6. Out of the two medical certificates, the first medical certificate is undated and states that appellant no. 3 was unwell. The period of both the certificates if taken together will show that appellant no. 3 at the most was unwell for a period of 105 days. Therefore, there is no justification as to why delay of more than 1000 days was caused in filing application for condonation of delay. Therefore, this ground is not appealable to me.

13. So far as travel of appellant nos. 1 and 2 (original defendant nos. 4 and 5) to Gujarat for work purpose is concerned, the appellants have not stated as to from when till when both these appellants were in Gujarat for work purpose. No specific dates have been mentioned as far as their travel to Gujarat is concerned. Therefore, it also creates doubt as to the reasons stated for not filing the

application/appeal in time.

14. It is pertinent to note that the advocate for the respondent has filed Roznama of execution proceedings from which it can be seen that appellants had appeared in the execution proceedings much earlier i.e. on 02.07.2016 along with their advocate and hence I conclude that they have made false statement before this Hon'ble Court that they got knowledge about passing of judgment and decree by the trial Court only on 09.07.2018 and, therefore, no leniency can be shown against such kind of litigants.

15. It is also pertinent to note that two of the sisters against whom the decree is passed have not preferred any appeal challenging the judgment and decree. So also, it can be seen that defendants preferred not filing any evidence before the lower Court and were negligent in their approach in conducting the suit in the lower Court. So also, the grounds stated by them that their advocate did not inform them about the passing of the decree seems to be an afterthought since they were appearing in the executing Court much earlier. The judgment in the case of Ram Nath Sao (supra) does not help the appellants because paragraph 13 of the said judgment is against them so also in said judgment matter was abated, as no steps were taken to bring legal heirs on record. As regards the second judgment in the case of Dr.

Yashwantrao (supra) cited by the appellants, there was delay of 650 days in filing Appeal, and the plea of non service of notice due to change of address was believed by the Supreme Court.

16. As far as judgment in the case of Majji Sannemma (supra) is concerned, a huge delay of 1011 days was not condoned in filing Second Appeal, hence the facts stated therein are squarely applicable to the matter at hand.

17. So also, taking into consideration the judgments of **P. K. Ramachandran Vs. State of Kerala and another** reported in (1997) 7 SCC 556, wherein delay of 565 days in filing Appeal was not condoned; **Esha Bhattacharjee vs. Managing Committee of Raghunathpur Nafar Academy and others** reported in (2013) 12 SCC 649, wherein 7 years delay to file Appeal was not condoned, I find no fault in the judgment and order of the District Court, in not condoning the inordinate delay.

18. As a result, Second Appeal is **Dismissed**.

19. In view of dismissal of second appeal, connected civil application stands disposed off.

[RAJESH S. PATIL]
JUDGE