

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

**SECOND APPEAL NO. 152 OF 2022
WITH
INTERIM APPLICATION NO. 1149 OF 2022
IN
SECOND APPEAL NO. 152 OF 2022**

**Smt. Shevanta Vishnu Desai
& Ors.**

..Appellants

v/s.

**Smt. Suvarana Babasaheb Isapure
& Anr.**

..Respondents

**Mr. D.V.Sutar a/w. Nirmal Pagaria a/w. Ms. K. Garg for the
Appellant.**

**CORAM : ANUJA PRABHUDESSAI, J.
DATED : 7th MARCH, 2022.**

P.C.

1. The Appellants herein have challenged the Order dated 8.12.2021 whereby the learned Civil Judge, Senior Division, Ichalkaranji has rejected the application under Section 5 of the Limitation Act, to condone the delay of 889 days in filing the First Appeal against the judgment and decree passed in Special Civil Suit No.47 of 2013.

2. Heard learned Counsel for the Appellants. I have perused the records.

3. The Respondent No.1 had filed a suit for specific performance of contract. The records indicate that the Appellants herein were duly served with the summons. They put in their appearance, but they failed to file written statement. Subsequently, the suit proceeded ex-parte and was decreed by judgment and decree dated 28.09.2016 whereby the Appellants were directed to execute the Sale Deed in respect of the said property after receiving the balance sale consideration.

4. The Appellants filed an Appeal before the District Court along with an Application under Section 5 of the Limitation Act. The grounds set out for condoning the delay are that the Appellant No.1 is an elderly lady of 80 years of age. The Appellant No.2 is employed and that the Appellant No.3 is his wife. The Appellants claimed that they are illiterate and had no knowledge of the proceedings. The Appellants also raised a ground of illness of the Appellant no.1 as well as the other Appellants, and claimed that

they did not get sufficient opportunity to prove their case on merits.

5. The Application has been dismissed on the ground that the Appellants had failed to file their written statement and contest the suit despite due service. The Appellate Court also took note of the fact that the Appellants were served with notice in the execution proceeding and had engaged an Advocate on 1.12.2019. And though they had knowledge of the decree, the Appeal was filed after the execution of the Sale Deed. The learned Judge therefore held that the delay is inordinate and that no sufficient grounds were made out to condone the delay, and hence dismissed the Application and the Appeal.

6. Learned Counsel for the Appellants submits that the Appellant no.1 is an elderly lady of 80 years of age. He submits that the Appellants are illiterate and do not know the consequences of the ex-arte decree. He further submits that they gained knowledge of the decree only when the decree was sought to be executed. He states that though the Sale Deed has been

executed, the Appellants are still in possession of the property and having given plausible explanation, they should be given an opportunity to contest the suit on merits.

7. I have perused the records and considered the submissions advanced by the learned Counsel for the Appellants. The only question for consideration is whether the Appellants had made out sufficient cause to condone the delay.

8. It is not in dispute that the Appellants were duly served with the summons and they had put in their appearance. The Appellants have stated that they were unable to appear on subsequent dates because of the advanced age and ill-health of the Appellant no.1. It is to be noted that the Appellant No.2, and Appellant No.3 are the children of the Appellant No.1 and they are not of advance age. The application itself indicates that the Appellant No.2 is in service and this fact falsifies the contention that the Appellant No.2 was unable to appear before the Court due to the illness of Appellant No.1.

9. It is also to be noted that the Appellants were duly served with notice in the execution proceeding on 03.01.2017 and notice of application for execution of Sale Deed was served on 15.01.2019. The Appellants appeared before the executing court through their lawyer on 01.02.2019 and the Sale Deed came to be executed on 04.05.2019. The Application for condonation of delay was filed on 12.07.2019, after execution of the Sale Deed.

10. It is true that the court is required to take liberal view while dealing with application for condonation of delay. Nonetheless, a valuable right accrued in favour of one party, particularly, when the delay is directly a result of negligence, default or inaction, cannot be interfered with in routine or casual manner. The discretion of condonation or refusal has to be exercised to advance substantial justice. In the instant case, the application has been filed belatedly after the decree has been executed in favour of the Respondent. The approach of the Appellants has been casual to take away the valuable right accrued in favour of the Respondent who has been acting vigilantly.

11. Under the circumstances, the learned Judge was justified in holding that the Appellants have not made out sufficient cause for condoning the delay. The Appeal has no merits and is accordingly dismissed.

12. Interim Application, stands dismissed in view of dismissal of the Appeal.

(ANUJA PRABHUDESSAI, J.)