

Pallavi

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

**SECOND APPEAL NO.354 OF 2021
WITH
INTERIM APPLICATION NO.3349 OF 2020**

Laxmanrao Marutirao Tamhane (deceased)
Through his Legal Heirs
Shankar Laxmanrao Tamhane ... Appellant
Versus
Jadhavji Jethabhai Balaji Sanatorium Trust
Public Trust through its Trustees -

1. Charandas Meghaji (Dismissed)
2. Ranjeet Dharamasi and Ors. ... Respondents

Mr. Rahul S. Kadam, for the Appellant/Applicant.
Mr. B.K. Raje for the Respondents.

**CORAM: MADHAV J. JAMDAR, J.
DATE : 16th DECEMBER, 2022**

P.C.:

1. Heard Mr. Rahul Kadam, learned counsel appearing for the Applicant/ Appellant and Mr. Raje, learned counsel appearing for the Respondent No.1 - Jadhavji Jethabhai Balaji Sanatorium Trust.
2. Second Appeal is admitted on the following substantial question of law:

“Whether the First Appellate Court committed illegality in dismissing Civil Miscellaneous Application No.2 of 2013 although sufficient reasons are given for condonation of delay in filing the Appeal challenging the judgment and decree of the learned Trial Court?

3. The factual position on record shows that the Respondents filed Regular Civil Suit No.351 of 1988 on 16th July 1988 seeking possession. It appears that the defendants engaged one Mr. J.B. Joshi to represent them. As per the contentions raised in Civil Miscellaneous Application, said Mr. Joshi, learned Advocate informed Appellant that as and when the suit would come for hearing, he would inform them. In the meanwhile, on 20th November 2012, the Appellants received notice of execution and therefore, they made inquiries and came to know that the said learned Advocate Mr. Joshi has passed away and the suit proceeded *ex-parte*. Thereafter, immediately, on 10th December 2012, the Appellants applied for certified copy. The said copies were received on 13th December 2012 and Miscellaneous Civil Application No.2 of 2013 seeking delay condonation was filed on 3rd January 2013. Therefore, there are sufficient reasons given for condonation of delay in filing the Second Appeal.

4. The learned First Appellate Court has not taken into consideration the same. The decree passed is of possession and therefore, it is necessary in the facts and circumstances of this case to allow Civil Miscellaneous Application No.2 of 2013 for condonation of delay. However, since the Respondent - Trust has to incur some

expenses, the Second Appeal is allowed on the condition that the Appellants pay to the Respondent - Trust Rs.15,000/- within a period of two weeks from today.

5. Thus, I pass the following order:-

ORDER

- (i) The impugned Judgment and Order dated 30th December 2019 passed by learned District Judge-2, Pandharpur in Civil Misc. Application No.2 of 2013 is quashed and set aside;
- (ii) Civil Misc. Application No.2 of 2013 filed in the Court of District Judge, Pandharpur, District Solapur is allowed by condoning delay in filing appeal challenging Judgment and Decree dated 26th September 2011 passed in Regular Civil Suit No.351 of 1988 by learned Joint Civil Judge, Junior Division, Pandharpur;
- (iii) The learned First Appellate Court is requested to dispose of the Appeal challenging the judgment and decree dated 26th September 2011 passed in Regular Civil Suit No.351 of 1998 on or before 31st July 2023;
- (iv) Till disposal of said Appeal, execution of decree passed by the learned Trial Court shall remained stayed;

- (v) It is needless to clarify that the contentions on merits are not examined by this Court and are expressly kept open;
- (vi) The Appellant to pay cost of Rs.15,000/- to the Respondents – Trust within two weeks from today.
- (vii) Second Appeal is disposed of in above terms.

(MADHAV J. JAMDAR, J.)