



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

SECOND APPEAL NO. 549 OF 2013
WITH CIVIL APPLICATION NO. 9975 OF 2013 IN SA/549/2013

Lalasaheb Mahadev Borade,
Age 35 years, Occu. Agril.,
R/o. Katgaon, Taluka and District
Ahmednagar

.. Appellant
(Original Applicant)

Versus

1. Mahadev Krishna Borade,
Age 62 years, Occu. Agril.,
2. Parvati Mahadev Borade,
Age 57 years, Occu. Household,
Both R/o. Katgaon, Taluka and
District Latur

.. Respondents
(Original Respondents)

Mr. Parag V. Barde, Advocate for Appellant

CORAM : S. G. MEHARE, J.

DATE : 19-12-2023

PER COURT :-

1. Heard the learned counsel for the appellant.
2. The brief history of the dispute was that the mother of the present appellant had filed a suit for partition bearing Regular Civil Suit No.405 of 1999. In the said suit, a compromise decree was passed in 2001. However, the mother again filed a Regular Civil Suit No.448 of 2001, disputing the compromise decree. The present appellant, who is the son of the respondents, had filed a consenting written statement. Considering the consenting written

statement of the defendants, the Court passed the decree in R.C.S.No.448 of 2001 in 2004.

3. The appellant/applicant had filed an application for condonation of delay with an appeal impugning the consenting decree passed in R.C.S.No.448 of 2001. He came with a case that his father had fraudulently obtained the signatures on some papers and the consent decree in R.C.S.No.448 of 2001. It was collusive and fraudulent decree. He was unaware of the said decree till April 2007. For the first time, he learned about the decree in April 2007 when the respondents quarrelled with him, attempted to dispossess him, and disputed his title. After inquiry, he came to know about the fraudulent decree. He obtained certified copies of the judgment and decree and intended to prefer an appeal, but various Advocates advised him that no appeal would lie against the consent decree. Hence, he was prevented from filing the appeal in limitation. He had occasion to consult the lawyer. At the time, he learned that in certain circumstances, when consent for a so-called decree has been challenged as it was a fraudulent consent decree, the appeal would lie. After such knowledge, he arranged for the documents and money and preferred the appeal against the decree passed in R.C.S.No.448 of 2001, dated 06.08.2004.

4. The filing of the appeal was delayed. The First Appellate

Court was not satisfied with the reasons and causes that restrained him from preferring the appeal in time. Disbelieving the reasons for the delay, the First Appellate Court rejected the application.

5. The learned counsel for the appellant read the impugned judgment and order of the First Appellate Court and argued that the First Appellate Court did not pay attention to submissions and pleadings in the application and, under the surmises, incorrectly calculated the period of limitation. However, fortunately, he agreed that the delay was six years, two months and twenty-four days in preferring the appeal. He submits that a liberal view ought to have been taken while considering the application for condonation of delay. He also relied on the case of **Collector, Land Acquisition, Anantnag and another, Appellants Vs. Mst. Katiji and others, Respondents, reported in A.I.R. 1987 S.C. 1353.**

6. Lastly, learned counsel for the appellant argued that the reasons for rejecting the application were perverse and not in tune with the pronouncements of the Hon'ble Supreme Court and the High Courts. He submits that there was sufficient cause for not preferring the appeal in time. He fairly conceded that there were findings of the First Appellate Court about acting upon the consent decree passed in R.C.S.No.448 of 2001 by the applicant.

7. It is correct that where the substantial rights of the parties have been affected in any litigation, the Court should take a lenient view in condoning the delay. The foremost essential requirement for seeking relief from the Court is the fairness of the parties to the suit. In this case, the appellant came up with a specific case that his father played fraud with him and obtained a consent decree. He did not deny that the decree was passed long back in 2004, and he applied for condoning the delay in 2010. He came up with a case for the first time in April 2007, when he learned about the consent decree. However, this way or otherwise, the First Appellate Court finds that the applicant had suppressed the material facts from the Court that he acted upon the decree impugned in the appeal and had knowledge about it.

8. Considering the facts, the Court is of the view that the First Appellate Court has rightly held that the applicant has suppressed the material facts and he had knowledge about the impugned judgment and decree. Suppressing material facts from the Court is good grounds for refusing the relief. The applicant has not come before the Court with clean hands. His intention appears to be not good, and he is not fair. Under the circumstances, the First Appellate Court has correctly observed that no discretion can be exercised in favour of the applicant in taking a liberal view to condone the delay.

9. After having gone through the dispute, the reasons for condoning delay, and the reasons assigned by the learned First Appellate Court, the Court believes that no substantial question of law was involved in this case. Hence, the appeal stands dismissed at the admission stage.

10. Pending civil application stands disposed of.

(S. G. MEHARE)
JUDGE

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