

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.9881 OF 2023

Sonabai Raghunath Kardak

Petitioner

Versus

Bhagirathi Bai D/O Raosaheb Shinde

Respondent

Mr. Rameez M. Shaikh, Advocate for the petitioner.

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[CORAM : NITIN B. SURYAWANSHI, J.]

DATE : 9th AUGUST, 2023

ORDER :

1. Petitioner is aggrieved by the order passed by learned District Judge-1, Vaijapur, below Exhibit-28 in Regular Civil Appeal No. 61/2017.

2. Petitioner/original respondent filed application in the appeal filed by respondent/appellant contending that the appeal is filed beyond limitation. Appellate Court dismissed the application. Hence, the present petition.

3. Heard the learned advocate for the petitioner. Perused the memo of writ petition, annexures and the impugned order.

4. Learned advocate for the petitioner submits that, admittedly, the decree is passed on 07.11.2017 and application is filed by the appellant for certified copy on 25.10.2017. By

relying on explanation of section 12 of Limitation Act, 1963, he submits that the time taken by the Court to prepare the decree or the order before an application for a copy thereof is made shall not be excluded in computing under this section. He therefore submits that if that time is excluded, the appeal filed by the respondent is beyond limitation and in this view of the matter, the impugned order is unsustainable in law and facts of the case.

5. This Court is unable to agree with the submission of learned advocate for the petitioner. By allowing the application of the petitioner, the respondent would be denied remedy of contesting statutory appeal on merits. Even if the argument of the petitioner is accepted, the respondent would be entitled to file application for condonation of delay, which is liable to be allowed considering peculiar facts of the present case. It is well settled that rules of procedure are handmaids of justice and they are prescribed to advance cause of justice and they should not be used to deny reasonable and fair opportunity to the party.

6. The Appellate Court has rightly exercised discretion in favour of the respondent and merely because another view is

possible, this Court will not interfere in the order impugned in the present petition in the extra ordinary writ jurisdiction. Writ petition being devoid of merit is dismissed.

[NITIN B. SURYAWANSHI, J.]