

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

SECOND APPEAL NO. 826 OF 2018

Mangal Sridhar Bobde

.. Appellant

Versus

1. Vitthal Sripat Aarsule

2. Walmik Vitthal Aarsule

2-A. Asha Walmik Aarsule

2-B. Ganesh Walmik Aarsule

3. Sanjay Vitthal Aarsule

4. Bhausahab Vitthal Aarsule

.. Respondents

Mr. Milind K. Deshpande, Advocate for the Appellant.

CORAM : KISHORE C. SANT, J.

DATED : 13th OCTOBER, 2023.

P C. :-

. Heard learned advocate for the appellant.

2. None appears for respondents in spite of service.

3. The appeal is filed by original plaintiff challenging the order passed by the learned Adhoc District Judge – 1, Aurangabad dated 21.06.2018 dismissing Civil Miscellaneous Application No. 391/2015 filed for condonation of delay in filing regular civil appeal. The

appellant had filed a suit bearing R.C.S. No. 516/2016 seeking partition and separate possession of the joint family properties. The suit came to be dismissed by judgment and order dated 06.03.2007. However, the appeal was filed after long delay of 3154 days. The reason assigned is that the appellant and respondents were engaged in the talks of settlement out of the Court. The respondents – original defendants kept her assuring that some solution would be worked out. It is only thereafter the appellant realized that the respondents are only killing time and therefore, she ultimately decided to file an appeal. The learned Appellate Court dismissed the application for condonation of delay as stated.

4. Learned advocate for the appellant vehemently argued that, the substantial rights of a lady litigant are involved in this matter. The learned District Judge has dismissed the application. The Court ought to have considered the matter to do the substantial justice instead of that the appeal is dismissed by dismissing the application for condonation of delay. The appellate Court has virtually refused the adjudication on merits. Learned advocate in support of his case relies upon the following judgments.

- (i) Yuvraj Vithu Sutar Vs. Dinkar Lahu Sutar
reported in 2012 (2) Mh.L.J. 174.

(ii) Collector, Land Acquisition, Anantnag and another Vs. Mst.. Katiji and others reported in AIR 1987 SC 1353.

(iii) N. Balakrishnan Vs. M. Krishnamurthy reported in AIR 1998 SC 3222.

5. Learned advocate for the appellant submits that now position is settled in respect of the rights of daughter as a co-person in the joint family property. If the appeal is not heard she would loose for the benefits as co-person.

6. Considering all the submissions, a substantial question of law arises as below :

Whether a party can be made to suffer only on technical ground of delay and laches where substantive rights are vested in the party.

7. Considering the submissions and the judgments this Court finds that, the order passed certainly affects the substantial rights of the appellant in this case. If the appellant has the right, she ought to have allow to prosecute the appeal. The regular appeal is the first appeal challenging the judgment and decree and those required to be liberally considered on merits.

8. Considering the above, this Court finds that, the second appeal

can be allowed by answering the question that, as the party need not suffer for the technical ground of delay and laches in such circumstances.

9. Thus, the second appeal is allowed.

10. The impugned order is set aside. The application for condonation of delay is allowed. The learned Appellate Court to register the appeal and shall try to dispose off it as early as possible.

11. The second appeal stands disposed off.

(KISHORE C. SANT, J.)

PS.B.