

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

APEAL FROM ORDER NO.4 OF 2020

Sumanbai Ankushrao Pawar,
 Age 53 years, Occu. Household,
 R/o. Deshpande Galli, Ambajogai,
 District Beed

.. Appellant
 (Original Plaintiff)

Versus

1. The State of Maharashtra
Through Collector, Beed
2. The Sub Registrar,
Sub Registry, Ambajogai, District Beed
3. Raichand Sobhagchand Karnawat
Age 75 years, Occu. Agri. & Business,
R/o. Industrial Area, Parli V,
At present Mangalwar Peth,
Ambajogai, In front of Devla
Hanuman Mandir, Ambajogai,
District Beed, Died, L.Rs :-
3/1 Shashikala Raichand Karnawat,
Age 65 years, Occu. Household,
3/2 Anand Raichand Karnawat,
Age 47 years, Occu. Business,
3/3 Sachin Raichand Karnawat,
Age 42 years, Occu. As above
All R/o. Opposite Deola Hanuman
temple, Mangalwar, Ambajogai,
Taluka Ambajogai, District Beed
4. Sidram Tukyaram Ghodke,
Age Major, Occu. Painter & Agri.,
R/o. Savta Mali Chowk,
Near Swayamvar Mangal Seva,
Ambajogai, District Beed
5. Ankush Tukaram Ghodke,
Age Major, Occu. Agri., R/o. As above
6. Santosh Tukaram Ghodke,
Age Major, Occu. and R/o. As above
7. Smt. Kamalbai Tukaram Ghodke,
Age Major, Occu. Household,
R/o. As above

.. Respondents
 (Original Defendants)

Mr. Sharad S. Shinde, Advocate for Appellant;
Mr. S. P. Tiwari, A.G.P. for Respondents No.1 and 2/State;
Mr. M. S. Karad, Advocate for Respondents No.4 to 7;
Mr. Vivek Bhavthankar, Advocate for Respondent No.8

CORAM : S. G. MEHARE, J.

DATE : 04-11-2023

PER COURT :-

1. Heard the learned counsel for the appellant and the learned counsel for the respondents.
2. The appellant/plaintiff had filed a suit for declaration of ownership, recovery of possession, perpetual injunction and *mesne* profits.
3. The suit was based on the title. The appellant also raised a small construction on the suit plot. She went to Pune to earn her livelihood. When she returned, she found that her small construction had been removed, and she was dispossessed. Hence, she filed a suit.
4. Her suit was dismissed on the grounds that the sale deed in her favour does not prove her title and the earlier judgments in Special Civil Suit No.12/1995 and 30/1996 were binding upon the plaintiff, though she was not a party to the suit, as by the said judgments right of vendor/defendant No.3 Raychand Karnawat was negated. The suit was also

dismissed as not within limitation.

5. She had preferred an appeal against the dismissal of the suit, but she could not pursue it. Hence, the appeal was dismissed for default. Then, an application for re-admission of appeal was filed. There was a delay of around one year and seven months. Learned District Judge Ambajogai was not satisfied with the reasons as insufficient to condone the delay. Against the said order, she approached this Court.

6. The learned counsel for the appellant submits that she is a poor lady. She had purchased the suit plot from her hard-earned money. She was to look after her husband. There was no inordinate and deliberate delay in preferring the application for re-admission. The substantial right to protect the immovable property was involved in the suit. Though the medical certificate was of the date before the dismissal order, she was to attend to her husband as he was not well. The learned first Appellate Court did not consider the fact in the true perspective and erroneously passed the order of dismissal on re-admission of the appeal.

7. Notices to the legal heirs of deceased respondent No.3 were served, but they did not appear.

8. Learned counsel for contesting respondents No.4 to 7

opposed the application and supported the impugned order. He would submit that the reasons for the delay were not satisfactory and plausible. The appellant was not diligent in pursuing the appeal. Sufficient time was granted to deposit the paper book charges, but she did not deposit it.

9. Perused the impugned order.

10. Admittedly, the order depositing the paper book charges was not complied with. The medical report shows that her husband was not well. She has tried to point out that due to the ill health of her husband, she could not pursue the appeal. She could not produce the correct documentary evidence of the ill health of her husband. However, the fact remains that she was busy attending to her husband. These facts could have been born in mind while considering the reasons for the delay. Such things may happen in the ordinary course of life. The health is always given the priority. These facts were sufficient to take a liberal view while condoning a delay which was not inordinate and deliberate. That apart, her substantial right to protect the immovable property has been involved in the suit. The first appeal is a continuation of the suit. She could not be deprived of the right to protect the immovable property only for nonpayment of the paper book charges. Hence, considering the reasons for her absence, it

cannot be said that it was not genuine and plausible. It is appropriate to take a lenient view to condone the delay.

ORDER

- i) The appeal is allowed.
- ii) The impugned judgment and order of the learned District Judge-4, Ambajogai, District Beed, passed in Miscellaneous Civil Application (R.J.E) No.19 of 2018 dated 02.07.2019, stands quashed and set aside.
- iii) The applications for re-admission of appeal with delay condonation are allowed.
- iv) The appeal be restored to its number.
- v) The appellant shall deposit the paper book charges on or before 15.12.2023.

**(S. G. MEHARE)
JUDGE**

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