

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

902 SECOND APPEAL NO.42 OF 2018

Govind s/o Gunwant Budrakshe

...Appellant

VERSUS

1. Shivaji s/o Sadashiv Lavte
2. Kondabai w/o Shivaji Lavte,
3. Amrut s/o Shivaji Lavte,
4. Shaam s/o Shivaji Lavte,
5. Antram s/o Shivaji Lavte,
6. Vinayak s/o Tukaram Budrakshe
...Appeal dismissed against him.
7. Ankush s/o Kashiram Budrakshe,
8. Vithal s/o Kashiam Budrakshe, ...Respondents

...

Advocate for Appellant : Mr. V.D.Gunale

Advocate for Respondent Nos. 1, 2 & 4 : Mr. Abhishek D. Chapule h/f

Mr.Patil N.P. Jamalpurkar

Advocate for Respondent Nos. 7 & 8 : Mr.P.G. Rodge

...

WITH

CA/669/2018 IN SA/42/2018

WITH

CA/13332/2018

IN SA/42/2018

CORAM : KISHORE C. SANT, J.

DATE : 07.09.2023.

PER COURT :

1. Heard the parties. The Second Appeal arises out of the order passed by the learned District Judge-2, Udgir in MCA No. 43 of 2015, whereby, an application for condonation of delay filed by this appellant/original plaintiff came to be rejected.

2. The appellant had filed a suit for declaration and injunction in respect of the property belonged to him as ancestral property. The learned Joint C.J.J.D., Udgir however, decreed the suit partly bearing RCS No. 551 of 2001 declaring the appellant as owner of only land Gut No. 226/6 ad-measuring 81 R. The appellant therefore, filed judgment and order of the lower Court dated 28.09.2015.

3. The present appellant has therefore, filed an appeal for not decreeing the suit. In the application for condonation of delay it is stated that though the Court had fixed the date for pronouncement of judgment on 28.09.2015, however, the same was not pronounced on the same date. On 03.10.2015 the concerned Clerk intimated the Advocate for the appellant that the judgment is signed by the Court. Immediately on the same

date an application came to be filed for certified copy & the same was received him on 26.10.2015. An appeal was filed alongwith an application on 23.11.2015. It is the case of the appellant that in fact there is no delay considering the time spent in issuance of certified copies, however, since an objection was raised, he filed an application for condonation of delay. In an application it is stated that since the appellant has received intimation of the judgment after 3-4 days and as such there was mistake on the part of the office of the Court, the delay is caused.

4. It is seen that the said application came to be rejected by the learned District Judge -2 by observing that the appellant has made allegations against the concerned Clerk of the trial Court without giving any evidence and it appears to be a serious thing on the part of the appellant. Since the allegations are made against the Court itself, an application came to be rejected. The learned District Court also further observed that looking at the decree it seems that the suit was only for injunction and said relief can be prayed even by filing another suit.

5. This Court finds that in view of the substantial question of law that arises that, “whether the learned District Judge -2 is right in rejecting application for condonation of delay only on the count that there appears to be allegations against the machinery of the Court”. The second question arises “as to whether there is reference in the allegations made, as such against the Court which passed the decree”.

6. This Court has given hearing on this count to both the sides. The learned Advocate for the appellant submits that the learned District Judge-2 has adopted hyper technical approach. The Court need not get sentimental while deciding the rights of the parties. Looking to the application, as such there is no allegation appearing against the Court, what is stated is only that because of let information given by the Clerk of the Court the Advocate could not immediately get knowledge of passing of the judgment. This Court needs to see whether the allegations are against the court. He then submits that even otherwise the delay is hardly of 30 days and the same needs to be condoned.

7. The learned Advocate for respondent Nos. 1, 2 and 4

vehemently opposed the application. He submits that there is nothing in the application to show as to what prevented the appellant from approaching the Court within time instead of making any allegations against the machinery of the Court.

8. The learned Advocate for the respondent Nos. 7 and 8 supports the appellants. The other respondents though are served have not appeared before this Court.

9. Considering the rival submissions and the impugned order, this Court finds that the first question is as to whether the learned District Judge -2 has right for rejecting the application, this Court finds that merely stating that because of the Clerk of the Court, the party could not get knowledge immediately and in no case said to be the allegations against the Court and certainly no reason to reject the application for condonation of delay.

10. Looking to the application as it is filed before the District Judge-2, this Court finds that infact there is no any allegations against the Court machinery as such. Assuming that it may happen inadvertently that the judgment though is

pronounced, still may not be delivered immediately for correcting arithmetical mistakes etc. The Court need not take such averments as allegation and there is possibility of preparing copies after 3-4 days after the pronouncement of the Judgment. Merely because of this aspect the application of mind the court need not touch such reason. This Court finds that the Court has unnecessarily taken the hyper sensitive approach and rejected the application.

11. Ultimately, the Court has to see as to whether the case is made out for condonation of delay. The Court has also to look into matter and to see that no party is deprived seeking redressal of his grievance from filing of the appeal for such delay or for any other reason which does not affect the merits of the case. In this view of the matter, this Court finds that the appeal deserves to be allowed. The judgment and decree needs to be quashed and set aside passed by the learned District Judge-2 and thus is quashed and set aside. Pending Civil Applications, if any, stands disposed off.

(KISHORE C. SANT)
JUDGE

mahajansb/