

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

CIVIL APPLICATION NO. 17404 OF 2022
IN
SECOND APPEAL STAMP NO. 33549 OF 2022
WITH
CIVIL APPLICATION NO. 17407 OF 2022

Kasim Shamshoddin Ansari and another ...Applicants

Versus

Bebi Yasin Sab Jamadar (Narona) and others ...Respondents

...

Advocate for Applicants : Mr. Undre Vikram S.

CORAM : GAURI GODSE, J.

DATE : 02nd JANUARY, 2023

PER COURT :

- 1) This application is filed for condonation of delay of 2431 days, i.e. more than 6.5 years in filing the Second Appeal.
- 2) Second Appeal is filed for challenging the judgment and decree for partition passed by the trial court and modified by the appellate court. The learned Civil Judge Junior Division, Tuljapur, decreed the suit of respondent no. 1 by judgment and decree dated 18th December 2007. Respondent no. 3/defendant no. 2 had preferred Regular Civil Appeal No. 22 of 2008. Said appeal is partly allowed by the learned District Judge-2,

Osmanabad by judgment and decree dated 19th January 2016. Present applicants are purchasers claiming through defendant nos. 1 and 2.

- 3) The reasons given in the application for condonation of delay in paragraph nos. 3, 4 and 5, are that the applicants were not aware of the impugned judgment passed by the appellate court. Perusal of the judgment of the appellate court shows that applicant no. 1 was represented by an advocate. Though the judgment of the appellate court do not show appearance on behalf of applicant no. 2, since she is wife of applicant no. 1, it is not believable that both the applicants were not aware about the judgment. The case made out by the applicants that they were not intimated by their advocate, is not substantiated by any supporting evidence. Applicants have not made out any case to show as to what efforts were made by them to enquire about the status of the appeal in the district court. Hence, the reason given, that the applicants were unaware of the judgment and decree of the appellate court is not believable. There is no supporting evidence to believe the contention of the applicants. It appears that only to delay the execution proceedings the applicants have filed the present proceedings.

- 4) I have perused the impugned judgment and decree

passed by both the Courts. Perusal of the judgments do not show that any substantial question of law arises in the Second Appeal. Learned counsel for the applicants, submitted that the main grievance of the applicants is in respect of actual division of the suit property by metes and bounds as per the shares of the parties, declared by the impugned judgment and decree passed by the appellate court. He submits that the applicants have already filed objection before the Tahsildar in the execution proceedings. The grievance of the applicants is that at the time of division of the suit property, the property which is actually sold to them by defendant nos. 1 and 2 should be taken into consideration for the share to be allotted to defendant nos. 1 and 2, as the same will be the entitlement of the applicants. He further submits that the objection raised by the applicants is already considered by the Tahsildar and necessary directions are issued to the Talathi with respect to Gut No. 5 which is purchased by the applicants. He further submits that pursuant to directions issued by the Tahsildar, Talathi is not acting upon the said directions. Hence, it will be necessary to condone the delay and grant an opportunity to the applicants to be heard on merits.

- 5) The grievances made by the learned counsel on behalf of the applicants with respect to execution of the impugned

decree and actual division of the suit property as per the allotted shares, will be considered by the concerned authority in the execution proceedings. In my view, the said objections cannot be made a subject matter of present second appeal and/or cannot be a ground for condonation of delay.

- 6) Second Appeal can be entertained only if substantial question of law arises. Hence, I called upon the learned counsel for the applicants to point out the substantial question of law if any, that arises in the second appeal. Learned counsel for the applicants was unable to point out any substantial question of law in the second appeal.
- 7) There is an inordinate delay of more than 6.5 years in filing the second appeal. There is no satisfactory and/or condonable ground made out in the application for condonation of delay. The reason given in the application is not acceptable. The submissions made by the learned counsel on behalf of the applicants in respect to the execution proceedings can neither be a ground to condone delay, nor can be a subject matter of the second appeal. Hence, in my view there is no merit in the application and the same needs to be dismissed.
- 8) Needless to state that the objections raised by the applicants in the execution proceedings will be dealt with by the concerned authority on its own merits and

in accordance with law and dismissal of present application for delay condonation in filing the second appeal, cannot affect the execution proceedings.

- 9) For the reasons stated above, the Civil Application is without any merits and is dismissed. There will be no order as to costs.
- 10) In view of the dismissal of Civil Application for condonation of delay, Civil Application No. 17407 of 2022, has become infructuous and hence, dismissed as infructuous.

(GAURI GODSE)
JUDGE

SPChauhan