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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

SECOND APPEAL NO.579 OF 2022

Surekha Bajrang Badade

(Since deceased through Legal Heirs

1. Vidya Dnyaneshwar Sadigale and Anr. ...Appellants

Versus

Pradeep Vasantrao Hingase and Ors. ...Respondents

- Mr. Kuldeep U. Nikam for the Appellants/Applicant.
- Mr. Mahindra Deshmukh for the Respondents.

CORAM : MADHAV J. JAMDAR, J.

DATE : 3rd MARCH 2023

P.C. :

1. Heard Mr. Kuldeep Nikam, learned counsel appearing for the Appellants and Mr. Mahindra Deshmukh, the learned counsel appearing for the Respondent Nos.1 and 2. Mr. Nikam states that Respondent No.3 is already served by private service and he has filed affidavit of service.

2. This Court, by order dated 9th December 2022 admitted the Second Appeal on the following substantial question of law:-

- i) Whether sufficient cause is shown for condonation of delay of about 30 days in filing the Appeal before the learned

Pallavi

District Judge, Sangli challenging the Judgment and Decree dated 31st July, 2019 passed by learned Civil Judge, Senior Division, Sangli in Special Civil Suit No.114 of 2016?”

3. By said order dated 9th December 2022, notice is issued to the Respondents and it has been mentioned that the Second Appeal is fixed for final hearing on 20th January 2023. Today, the matter is listed in furtherance of said order dated 9th December 2022. Mr. Deshmukh appears for the Respondent Nos.1 and 2 and Respondent No.3 is served.

4. The factual position on record shows that the learned Trial Court passed the Judgment and Decree on 31st July 2019. The original Appellant before the learned First Appellant Court filed application for certified copy on 2nd August 2019 and received the same on 17th August 2019. Delay condonation application was lodged on 11th October 2019. Therefore, delay is of 30 days. Original Appellant has given the following reasons in the application for condonation of delay:-

- i) Applicant is old of 63 years;
- ii) Applicant is ill;
- iii) There was no deliberate delay;

Pallavi

5. The learned first Appellate Court dismissed the said delay condonation application bearing Civil Misc. Application No.236 of 2019, *inter-alia*, on following grounds :-

- (I) Original Applicant filed Execution Petition No.98 of 2019 on 17th September 2019;
- (II) There is no document on record to show that the original applicant was ill after the decision in original suit;
- (III) Therefore, it has not been established that there was reasonable cause for her in non filing of appeal within limitation.

6. In view of the above, it is the contention of the learned Advocate appearing for the Respondents that the original Appellant was personally present for filing execution petition on 17th September 2019 and therefore, case put up that she was not well, is not correct.

7. In fact, the factual position on record shows that the original applicant was not well and during the pendency of said Misc. Application, she passed away. It is also admitted position that at the relevant time the original Applicant was senior citizen of 63 years old. The delay which has occurred in filing Appeal is not inordinate and it is only of 30 days delay. The finding of the Appellate Court

Pallavi

that no satisfactory reason is given for condonation of delay of said 30 days is without any basis. The delay is very short of 30 days. Sufficient reasons are given in the application. Just because the original applicant has attended the Court for filing the execution petition, does not mean that the reasons given are not genuine reasons.

8. Therefore, the approach of the learned First Appellate Court is not proper. Apart from that, there are sufficient reasons given in the Misc. Appeal and therefore, the impugned order dated 31st March 2022 passed by the learned District Judge-6, Sangli in Civil Misc. Appeal No.236 of 2019 is quashed and set aside.

9. Second Appeal is allowed in above terms with no order as to costs.

[MADHAV J. JAMDAR, J.]