

VRJ

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

SECOND APPEAL NO.178 OF 2022

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Balasaheb Bhikaji Shinde ... Appellant

V/s.

Chandrakant Pandurang Potdar ... Respondent

**WITH
INTERIM APPLICATION NO.16960 of 2022
IN
SECOND APPEAL NO.178 of 2022**

Balasaheb Bhikaji Shinde ... Applicant

V/s.

Chandrakant Pandurang Potdar ... Respondent

Mr. Ganesh Bhujbal for the appellant

Mr. Pavan Patil for the respondent.

CORAM : AMIT BORKAR, J.

DATED : DECEMBER 21, 2023

P.C.:

1. The appellant is original defendant in a suit for specific performance filed by the respondent. The Trial Court, by judgment and decree dated 14th September 2018, decreed the suit for specific performance directing the defendant to execute sale deed in favour of the plaintiff by accepting balance consideration of Rs.1,75,000/-.

2. The defendant, on 10th December 2018, filed appeal against

the said decree. There was delay of 75 days' in filing the appeal. The applicant in the application for condonation of delay stated that the appellant was suffering from viral fever and was, therefore, unable to contact his lawyer.

3. The Appellate Court, by the impugned order, rejected the application mainly on the ground that the applicant is resident of Pune. The illness certificate is issued by a doctor who is practitioner, residing at Wai. Therefore, the medical certificate annexed along with the application does not satisfy contents in the medical certificate.

4. Learned advocate for the respondent supported the impugned order by contending that the medical certificate produced by the claimant has been disbelieved and, therefore, the Appellate Court has rightly rejected the application.

5. It is well settled that while considering application for condonation of delay, the sufficient cause needs to be considered liberally. Since the valuable rights of the parties to the immovable properties are involved and particularly in the facts of decree for specific performance, the appeal is against exercise of discretion by the Trial Court, the Appellate court is required to consider questions of fact and law.

6. Though it is true that the quantum of delay is not relevant and only the cause shown by the applicant needs to be considered. However, considering the reason mentioned in the application that the applicant was suffering from fever and was, therefore, unable to move, in my opinion, satisfies test of sufficient cause under

section 5 of the Limitation Act, 1963. The proof produced by the applicant in the form of medical certificate could not have been disbelieved unless issuance of such certificate was disowned by the person who issued such certificate. Therefore, in my opinion, the Appellate Court was not justified in rejecting the application.

7. The substantial question of law involved is as under:

8. Whether the lower Appellate Court was justified in rejecting application for condonation of delay of 75 days in filing appeal against decree for specific performance in view of the fact that the applicant had produced on record medical certificate to prove sufficient cause that the applicant was suffering from fever and was unable to move.

9. For the said reason, impugned judgment and decree passed by the lower Appellate Court deserves to be set aside. Hence, following order:

a) The impugned judgment and decree passed by District Judge-2, Khed-Rajgurunagar, District Pune in Civil Miscellaneous Application No.62 of 2018 dated 3rd September 2021 is quashed and set aside.

b) The appeal filed by the appellants shall be registered.

10. The appellate Court shall decide substantive appeal on its own merit.

11. Parties shall appear before the lower Appellate Court on 15th January 2024.

12. The second appeal stands disposed of. No costs.

13. Since the suit is of the year 2008, the Appellate Court shall decide the appeal within six months from the date of appearance of the parties.

(AMIT BORKAR, J.)