

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

**SECOND APPEAL NO. 747 OF 2022
WITH
INTERIM APPLICATION NO. 20076 OF 2022
IN
SECOND APPEAL NO. 747 OF 2022**

Krushnabai Ramchandra Yadav	 Appellant
v/s.	
Dinesh Ganapat Yadav	 Respondent

Mr. Prithviraj S. Gole for the Appellant.
Mr. Nikhil Wadikar a/w. Mr. Pradip Zende i/b. Mr. Nandu Pawar
for the Respondent.

CORAM: SMT. ANUJA PRABHUDESSAI, J.

DATED : 09th OCTOBER, 2023.

P. C. :-

. The Appellant herein has impugned the order dated 16/08/2022 in Civil Miscellaneous Application No.87/2018 passed by the learned District Judge, Satara dismissing the Application for condonation of delay of 03 years and 08 months in filing an appeal against the judgment and decree dated 30/06/2014 for specific performance.

2. The Respondent herein who was the plaintiff in the suit, had filed a suit for specific performance of agreement dated 01/07/2008

executed by the Appellant herein in his favour for sale of land admeasuring 53 R for sale consideration of Rs.1,50,000/-. The Appellant herein was duly served with the summons. She put in her appearance through an advocate but failed to file the written statement. The learned Judge upon considering the evidence adduced by the Respondent – plaintiff, decreed the suit by judgment and decree dated 30/06/2014.

3. The Respondent subsequently filed execution proceedings, the notice of which was duly served on the Appellant. The Appellant through her advocate appeared before the Executing Court on 28/04/2015. On 16/04/2018, the Appellant filed an appeal along with an application for condonation of delay mainly on the ground that she is a senior citizen and suffering from several ailments including senile debility. She also claimed that she was unable to approach the Court immediately due to financial constraints.

4. The learned Judge dismissed the application on the ground that the Appellant has suppressed the fact that she was served with the notice on 28/04/2015. The learned Judge rejected the ground of medical ailments and dismissed the application for want of sufficient

ground. Hence, this Appeal.

5. Heard learned counsel for the Appellant and learned counsel for the Respondent. I have perused the records and considered the submissions advanced by the learned counsel for the respective parties.

6. In the instant case, the Appellant was served with summons in the suit for specific performance. Though the Appellant was represented by an advocate in the suit, she did not file the written statement and did not contest the suit. The suit proceeded ex-parte and decree for specific performance was passed on 30/06/2014.

7. The Appellant was duly served with the notice in the Execution proceedings and she appeared before the Executing Court on 28/04/2015. She was represented by the same Advocate, who had represented her in the suit. The Appellant claims that she approached another advocate on 11/09/2017, who applied for certified copy and after obtaining certified copy of the judgment, the Advocate advised her to challenge the same.

8. The records reveal that the Appellant had received the certified

copy of the judgment on 22/09/2017 whereas the appeal alongwith the application for condonation of delay was presented before the Court on 16/04/2018 i.e. six months from the date of receipt of the certified copy of the judgment. It is true that the term “sufficient cause” has to be construed liberally as to advance cause of justice. At the same time the delay cannot be condoned as a matter of judicial generosity, particularly when the party was negligent and or was not diligent in prosecuting the matter.

9. In a recent decision in ***Ajay Dabra v/s. Pyare Ram*** in ***Civil Appeal Nos.716 and 717 of 2023*** decided on 31/01/2023, while refusing to condone the delay of 254 days, the Apex Court has observed thus :-

“ 5. ...An appeal has to be filed within the stipulated period, prescribed under the law. Belated appeals can only be condoned, when sufficient reason is shown before the court for the delay. The appellant who seeks condonation of delay therefore must explain the delay of each day. It is true that the courts should not be pedantic in their approach while condoning the delay, and explanation of each day's delay should not be taken literally, but the fact remains that there must be a reasonable explanation for the delay...”

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10. *This Court, while emphasizing the scope of Section 5 of the Limitation Act, in the case of Mahant Bikram Dass Chela vs. Financial Commissioner, Revenue, Punjab, Chandigarh and others (1977) 4 SCC*

69, has held :-

“21. Section 5 of the Limitation Act is a hard task-master and judicial interpretation has encased it within a narrow compass. A large measure of case-law has grown around Section 5, its highlights being that one ought not easily to take away a right which has accrued to a party by lapse of time and that therefore a litigant who is not vigilant about his rights must explain every day’s delay. These and similar considerations which influence the decision of Section 5 applications are out of place in cases where the appeal itself is preferred within the period of limitation but there is an irregularity in (1977) 4 SCC 69 presenting it. Thus, in the instant case, there was no occasion to invoke the provisions of Section 5, Limitation Act, or of Rule 4, Chapter I of the High Court Rules. If the Division Bench were aware that Rule 3 of Chapter 2-C is directory, it would have treated the appeal as having been filed within the period of limitation, rendering it inapposite to consider whether the delay caused in filing the appeal could be condoned.”

10. In the instant case, the suit for specific performance was filed in the year 2012 and the same was decreed in the year 2014. The application for condonation of delay was filed in the year 2015, six months after receipt of the certified copy. Even assuming that the Appellant was suffering from ailments and was unable to challenge the decree within the period of limitation, the Appellant has not explained the delay of six months in filing the application. It is in these circumstances that the Appellate Court has held that the Appellant had

failed to show sufficient cause to condone the delay.

11. Having gone through the records and having considered the reasons stated in the impugned order dated 16/08/2022, in my considered view, no substantial question of law is involved. Hence, the Appeal stands dismissed. Interim Application stands disposed of in view of dismissal of the Appeal.

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JAYANI

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HEERO JAYANI
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(SMT. ANUJA PRABHUDESSAI, J.)