

*Harish*

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

**SECOND APPEAL NO.476 OF 2021**

Bharat Ramchandra Yadav & Ors. ...Appellants

Versus

Sangita Dattatraya Shinde & Ors. ...Respondents

Mr. Kuldeep U. Nikam a/w Om Latpate, for the Appellants.

Mr. Sandeep Koregave for Respondent No. 1.

**CORAM : MADHAV J. JAMDAR, J.**

**DATE : 8<sup>th</sup> MARCH, 2023**

**P.C.:**

1. Heard Mr. Nikam, learned counsel appearing for Appellants and Mr. Koregave, learned counsel appearing for Respondent No.1.

2. Following substantial question of law is involved in this Second Appeal:

“Whether the learned First Appellate Court is right in dismissing the Application of delay condonation bearing Civil Miscellaneous Application No. 5 of 2015 although, sufficient reasons are assigned in the Application?”

3. Mr. Kuldeep Nikam submitted that, sufficient reasons are assigned for the delay condonation, however, the learned First Appellate Court completely ignored the same. On the other hand, Mr. Koregave, learned counsel of Respondent No. 1 submitted that there is inordinate delay of 3 years and 7 months and, therefore, the learned Court has rightly rejected the Application.

4. The factual position on record shows that, the impugned judgment and decree of the learned Trial Court is dated 30<sup>th</sup> November, 2011 and the Appellant filed the said Miscellaneous Application along with Appeal Memo on 30<sup>th</sup> December, 2014. Therefore, there is delay of 3 years.

5. It is the case of the Appellants in the said Miscellaneous Application that in said Special Civil Suit NO. 214 of 2005 one Advocate Pakhali was appointed. The Appellants are resident of Mangalvedha, Dist- Solapur and the said Suit has been filed at Sangli. The said Advocate Pakhali is from Sangli. It is their case that their Advocate has informed them that, it is not necessary to remain present on each and every date and he would inform them whenever their presence is required. In or about May, 2013 they came to know that the Original Defendant No. 1 Sangita Dattatray Shinde is trying to sale the suit property and therefore, they came from Mangalvedha to Sangli for the purpose of meeting their Advocate and at that time they, came to know that the suit has been dismissed on 30<sup>th</sup> November, 2011. Therefore they immediately approached Advocate at Mangalvedha i.e. Advocate Shivajirao Patil and said Advocate had issued notice to the Respondent No. 1 dated 10<sup>th</sup> May, 2013. In the said notice, it is specifically mentioned that, they would be filing Appeal challenging the decision in the said Special Civil Suit No. 214 of

2005. Said Advocate Patil from Mangalvedha issued notice dated 10<sup>th</sup> May, 2013 and he instructed the Appellants to immediately file Appeal at Sangli and thereafter, they immediately went to Advocate Sanadi who applied for certified copy on 24<sup>th</sup> May, 2013 and certified copies were issued on 24<sup>th</sup> June, 2013. Thereafter, they approached Advocate Sanadi and gave him the necessary instructions and the said Advocate Sanadi informed them that he would file Appeal and call them to the Court as and when necessary. He told them that, it would take lot of time for hearing the said Appeal. Therefore, the Appellants were under the impression that the said Advocate Sanadi had filed Appeal.

6. Thereafter, in or about November, 2014 the Appellants came to know that Respondent No. 1 has sold the suit property to one Namdev Annappa Edke and therefore, they immediately contacted said Advocate Sanadi and informed about the date of Appeal and at that time they came to know that Advocate Sanadi had not filed any Appeal. Therefore, they immediately took back all papers from Advocate Sanadi and filed Appeal on 30 December, 2014 through Advocate A. B. Shelar.

7. It is to be noted that, very detailed delay condonation Application is filed. The reply of the Respondents is only of denial. In the reply, it has been mentioned that after the decision of said suit, the Respondent No. 1 approached the revenue authorities for

entering their name and the same was opposed by the Appellants. It has been further mentioned that, the suit property is already sold to Namdev Annappa Edke and therefore, it is prayed that the Application be dismissed.

8. Perusal of order passed by learned First appellate Court, clearly shows that, the First Appellate Court has observed that, the reasons assigned by the Appellants for delay condonation do not come within the ambit of sufficient cause. Sufficient cause is a very wide term. It is settled legal position that, liberal approach should be there when dealing with delay condonation Application. However, if delay is for large period, the reasons are to be verified cautiously.

9. In the present case, detailed reasons are given by the Appellants. The Appellants are staying at Mangalvedha, Dist-Solapur. The suit and appeal was filed at Sangli. The Appellants have given all the details that, after coming to know that, Respondent No. 1 is trying to sale the suit property, they immediately contacted their advocate Shri. Pakhali of Sangli and they came to know that, in their absence decree was passed. Thereafter, they approached Advocate Sanadi, who applied for certified copies and after receiving the certified copies they complied with all the requirements and he informed them that, the Appeal would take some time for hearing and he would inform

them about the date of hearing. In the meanwhile, in November, 2014 they came to know that third party interest has been created by the Respondents and therefore, they again approached Advocate Sanadi and came to know that Appeal was not filed. Thereafter, ultimately they approached Advocate A. B. Shelar and Appeal was filed with detail delay condonation Application on 30<sup>th</sup> December, 2014.

10. Order of the learned First Appellate Court shows that, the detail grounds mentioned in the delay condonation Application are not taken into consideration. Therefore, there is substance in the substantial question of law raised by Mr. Kuldeep Nikam, learned counsel appearing for the Appellants.

11. The Second Appeal deserves to be allowed by setting aside the order dated 18<sup>th</sup> September, 2019 passed by the learned Principal District Judge, Sangli in Civil Miscellaneous Application No. 5 of 2015 and the said Civil Miscellaneous Application is allowed in terms of prayer clause (a). Resultantly, the delay in filing the Appeal is condoned.

12. In view of condonation of delay, **Appeal** filed in the District Court, Sangli at Sangli challenging the Judgment and Decree dated 30<sup>th</sup> November, 2014 passed by the learned Civil Judge, Senior Division, Sangli, District Sangli is restored to file and to be

proceeded in accordance with law. Both the parties to remain present before the concerned learned District Judge, Sangli on **12<sup>th</sup> June, 2023** at 11.00 a.m. and to place on record copy of this order. The concerned learned District Court to proceed with the **Appeal** in accordance with law.

13. The Second appeal is allowed in above terms with no order as to costs.

(MADHAV J. JAMDAR, J.)

Note : This order is corrected by speaking to the minutes of order dated 28<sup>th</sup> April, 2023. The correction is shown in bold in line no. 1 of paragraph No.12 at page 5 and additional corrections also shown in bold in the same paragraph.