

Dusane

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

**SECOND APPEAL NO.414 OF 2020
WITH
INTERIM APPLICATION NO.2515 OF 2019**

Santosh Chandrakant Khot ...Appellant

V/s.

Sudarshan Dnyaneshwar Khot ...Respondents
& Ors.

Mr. Nagesh Y. Chavan for Appellant/Applicant

Mr. Shashank C. Mangle i/by Balwant Salunkhe for
Respondents.

**CORAM: MADHAV J. JAMDAR, J.
DATE: 15th FEBRUARY 2023**

P.C.:

1. Heard Mr. Chavan, learned Counsel appearing for the Appellant and Mr. Mangle, learned Counsel appearing for the Respondents.

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

Whether the learned First Appellate Court has committed illegality in rejecting the Civil Miscellaneous Application No.123 of 2017 seeking condonation of delay in filing the appeal inspite of sufficient reasons being assigned for said delay?

3. Mr. Chavan, learned Counsel appearing for the Appellant 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. Mangle, learned counsel appearing for the Respondents submitted that there is inordinate delay of 2 years and 11 months and 23 days and, therefore, the learned Court has rightly rejected the Application.

4. In the said Civil Miscellaneous Application No. 123 of 2017, it is the contention of the Appellant that the Appellant is in Military service and after receiving suit summons in Regular Civil Suit No.26 of 2010, he has filed Vakalatnama of Advocate Shri. H.A. Pawar. However, due to his Military service, he could not file written statement and therefore "No W.S." order was passed on 17th January 2011 and thereafter, the suit was decreed on 27th June, 2014. It is his contention that he was not at all aware that the suit has been decreed.

5. Thereafter, Civil Miscellaneous Application No. 20 of 2015 was filed under Section 54 of Code of Civil Procedure and same was decided on 9th December 2015. It is the contention of the Appellant that no notice of said application was received by him. It is the contention of the Appellant that for the first time, he received notice on 19th April 2017 regarding partition and at that

time, he came to know about the impugned judgment and decree. Thereafter he applied for certified copies through his friend and he came to Sangli by taking leave from Military service and filed appeal on 20th June 2017.

6. It is admitted position that the decree of partition passed by the learned Trial Court is executed. Perusal of impugned order passed by the learned First Appellate Court shows that the learned First Appellate Court accepted that the Appellant was in Military service, however, further observed that he could have executed power of attorney in favour of his mother and could have looked after the suit through his mother. The learned First Appellate Court further held that the Appellant deliberately avoided to attend the Court proceeding. There is no basis for said observation as in this case, exparte decree has been passed and thereafter the same has been executed. Therefore, there is no valid ground to draw the conclusion that the Appellant deliberately avoided to attend the Court proceeding.

7. It is admitted position that the Appellant is in Military service and therefore the reasons given in the Civil Miscellaneous Application No. 123 of 2017 are genuine reasons. Nothing is brought on record by the Respondents for drawing the conclusion that the delay caused is deliberate.

8. The power of attorney dated 20th June 2017 is executed by the Appellant in favour of his mother and the same is produced before the learned First Appellate Court. Therefore, it is clear that during the pendency of the suit, there was no power of attorney executed in favour of mother. This is not a case where it can be said that the delay in filing the appeal is deliberate. In fact, the Appellant has suffered the decree of partition and possession and the same has been executed. Therefore, this is not a case where the Appellant has taken advantage of said delay.

9. For the above reasons, it has to be held that there is substantial question of law raised by the Appellant. The learned First Appellate Court without taking into consideration that the sufficient reasons are assigned for delay condonation dismissed the said Civil Miscellaneous Application. Therefore, the impugned order dated 20th September 2019 passed by the learned Principal District Judge, Sangli in Civil Miscellaneous Application No. 123 of 2017 is quashed and set aside.

10. The said Civil Miscellaneous Application No. 123 of 2017 is allowed in terms of prayer clause (b) subject to payment of cost of Rs.15,000/- to be paid to Respondent No. 4 - Sheetal Dnyaneshwar Khot. Respondent No. 4 - Sheetal Dnyaneshwar Khot will accept said cost on behalf of herself and on behalf of

Respondent Nos.1 to 3. The cost to be paid within eight weeks from today.

11. In view of condonation of delay, appeal filed in the District Court, Sangli at Sangli challenging the Judgment and Decree dated 27th June 2014 passed by the learned Civil Judge, Junior Division, Kavathe Mahankal, 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 17th April 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.

12. Second Appeal is disposed of in above terms with no order as to costs. In view of disposal of Second Appeal, nothing survives in the Interim Application and the same is also disposed of.

BHALCHANDRA
GOPAL
DUSANE

(MADHAV J. JAMDAR, J.)

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