

Harish

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

**SECOND APPEAL NO. 329 OF 2021
WITH
INTERIM APPLICATION NO. 2053 OF 2019
IN
SECOND APPEAL NO. 329 OF 2021**

Vilas Tukaram Chavan ...Appellant/Applicant

Versus

Suresh Bhanudas Kulkarni & Ors. ...Respondents

Mr. Anand S. Shalgaonkar, for the Appellant/Applicant.

Mr. Dilip B., Shinde, for Respondent Nos. 1.

CORAM : MADHAV J. JAMDAR, J.

DATE : 19th April, 2023

P.C.:

1. Heard, Mr. Shalgaonkar, learned counsel appearing for the Appellant and Mr. Shinde, learned counsel appearing for the Respondent No. 1.

2. This Court by order dated 3rd February, 2023 framed following substantial question of law in this Second Appeal :-

“Whether the learned First Appellate Court while rejecting the application for condonation of delay in challenging the Judgment and Decree dated 5th September, 2011 passed in Regular Civil Suit No. 70 of 2002 has ignored sufficient reasons given by the Appellant for condonation of delay?”

3. The Second Appeal takes exception to the order dated 24th

July, 2019 passed by the learned District Judge-8, Sangli in Civil Miscellaneous Application No. 229 of 2014 by which delay condonation application filed in appeal challenging the Judgment and Decree dated 5th September, 2011 in Regular Civil Suit No. 70 of 2002 was dismissed. As a result of the same, the Appeal before District Judge was dismissed and therefore the Second Appeal.

4. Mr. Shalgaonkar, learned counsel appearing for the Appellant submitted that, Respondent No. 1 filed Regular Civil Suit No. 70 of 2002 in the Court of Civil Judge, Junior Division, Tasgaon for removal of alleged encroachment on certain portion of the property out of City Survey No. 5 of Tasgaon, Dist- Sangli. The said Suit was decreed on 5th September, 2011. He submits that, another suit bearing Regular Civil Suit No. 71 of 2002 was also filed for removal of encroachment with respect to another portion of said City Survey No. 5 situated at Tasgaon, Dist- Sangli. The said Regular Civil Suit No. 71 of 2002 was decreed on 26th September, 2011. He submits that, thus, the aforesaid two suits were decided on 5th September, 2011 and 26th September, 2011 respectively and the advocate was engaged to file the appeal before the District Court, Sangli. He submits that, accordingly Regular Civil Appeal No. 410 of 2011 was filed with respect to the decree passed in Regular Civil Suit No. 71 of 2002, however, inadvertently the Appeal was not filed with respect to decree

passed in Regular Civil Suit No. 70 of 2002.

5. It is mentioned in the delay condonation application that, as the applicant was having health issues and for that purpose he was required to take treatment frequently with various doctors and therefore he could not meet his Advocate to get detail information about the progress of the matter. It is mentioned in the application that, as soon as he realized that, the Appeal was not filed with respect to the Judgment and Decree passed in Regular Civil Suit No. 70 of 2002, he took steps and filed Appeal along with delay condonation application bearing Civil Miscellaneous Application No. 229 of 2014.

6. The Respondent No. 1 has filed reply dated 29th January, 2015 *inter alia* stating that, sufficient reasons are not given by the Appellant in delay condonation application.

7. The Learned District Judge-8, Sangli by the impugned Judgment and Order dated 26th September, 2019 rejected the said delay condonation application by observing that, both the suits were decided in the same month and therefore, the Applicant was aware about the decisions in both the suits and when he could meet his advocate in filing Appeal in one matter, he could have easily taken steps to file Appeal with respect to the Judgment and Decree passed in Regular Civil Suit No. 70 of 2002.

8. It is the contention of Mr. Shalgaonkar that, the said delay condonation application was dismissed without considering the sufficient reasons set out in the Interim Application. On the contrary, it is the contention of Mr. Shinde that, the proper reasons are given by the learned First Appellate Court while rejecting the delay condonation application.

9. Perusal of delay condonation application, clearly shows that, in fact the Appellant was under the impression that two separate Appeals were filed challenging the Judgments and Decrees passed in respect of both the suits and as soon as he came to know that only one appeal was filed, he took steps for filing another Appeal. Therefore, the reasons given by the learned First Appellate Court while rejecting the delay condonation application are contrary to the reasons set out in the Civil Miscellaneous Application. The learned First Appellate Court has completely ignored that, the Appellant has taken steps for filing Appeals in both the suits and he was under the impression that both the appeals were filed. Therefore, the reasons given in paragraph No. 11 by the learned First Appellate Court are not proper.

10. Mr. Shalgaonkar submitted that, in fact the same advocate was engaged for filing the Appeals in Regular Civil Suit No. 70 of 2002 as well as Regular Civil Suit No. 71 of 2002. He submitted that, inadvertently, only one appeal was filed challenging the

Judgment and Decree in Regular Civil Suit No. 71 of 2002. Mr. Shalgaonkar relied on the Judgment of a learned Single Judge of this Court dated 28th February, 2023 passed in Interim Application No.2047 in 2019 in Suit No. 3350 of 2009 wherein it has been held that when a party engages an advocate who is expected to appear at the time of hearing but fails to so appear, normally, a party should not suffer on account of default or non-appearance of the advocate.

11. Mr. Shinde has relied on the Judgment of the Supreme Court in the matter of **Ajay Dabra Vs. Pyare Ram & Ors**¹. to contend that, delay in 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. In the present case the reasonable explanation has been set out in the application seeking delay condonation and therefore, the delay in the present case is required to be condoned in the interest of justice.

12. Mr. Shinde has also relied on another Judgment of the

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Supreme Court reported in the matter of **Majji Sannemma @ Sanyasirao Vs. Reddy Sridevi & Ors.**² wherein in the facts and circumstances of that case Supreme Court found that, in the application for condonation of delay no explanation much less a sufficient or a satisfactory explanation had been offered and therefore the application for delay condonation was dismissed. However, in the present case as discussed hereinabove, reasonable and sufficient explanation has been given. Therefore, there is a substance in the substantial question of law raised in this Second Appeal.

13. For the above reasons, the Second Appeal deserves to be allowed by setting aside the Judgment and Decree dated 24th September, 2019 passed by the learned District Judge-8, Sangli in Civil Miscellaneous Application No. 229 of 2014.

14. Resultantly, the Appeal filed before the District Court, Sangli Challenging the Judgment and Decree dated 5th September, 2011 passed in Regular Civil Suit No. 71 of 2002 by the learned Civil Judge, Junior Division, Tasgaon is restored to the file of learned District Court, Sangli.

15. Both the parties are directed to appear before the concerned learned District Judge, Sangli on 19th June 2023 for fixing the schedule of hearing. The concerned learned District Judge to

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decide the said Appeal in accordance with law.

16. As the Appeal is of the year 2014, learned First Appellate Court is requested to dispose of the same expeditiously. Till the disposal of the Appeal, execution of the Judgment and Decree passed in Regular Civil Suit No. 70 of 2002 shall remain stayed.

17. In view of disposal of the Second Appeal, nothing survives in the Interim Application and the same is also disposed of.

(MADHAV J. JAMDAR, J.)