



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

**SECOND APPEAL NO.251 OF 2023
WITH
CIVIL APPLICATION NO.5883 OF 2023
WITH
CIVIL APPLICATION NO.6880 OF 2023**

Anjali Ramakant Attarde,
Age : 55 years, Occu.: Household,
R/o.: 33-A Shital Nagar,
Behind Hotel Radissons, Near Bhumi School,
Vijay Nagar, Indor, Madhya Pradesh **APPELLANT**
(Org. Def. No.1ee)
(Appellant in FA)

VERSUS

1. Ravindra Atmaram Sonawane,
Age : 60 years, Occu.: Agri., & Service,
R/o.: Aai Bunglow, Plot No.5
M. J. College Road, Jalgaon,
District : Jalgaon
2. Padmakar Shahaji Patil,
Age : 63 years, Occu.: Agri., & Service,
R/o.: Gurukul Colony, Plot NO. 15/1,
M. J. College Road, Jalgaon, District : Jalgaon.
3. Sitaram Bondru Patil (Nemade)
(Dead)
4. Tulsabai Sitaram Nemade
(Dead)
5. Madhav Sitaram Nemade
(Dead)
Through Legal Representatives
(Died During pendency of FA)
- 5A. Devkibai Madhav Nemade,
Age : 67 years, Occu.: Household,

- 5B. Uday Madhav Nemade,
Age : 45 years, Occu.: Peon

5A & 5B R./o.: Sadoba Nagar,
Jalgaon
6. Vinayak Sitaram Nemade
(Dead)
Through Legal Representatives
(Died during pendency of FA)
- 6A. Rajani Vinayak Nemade,
Age : 31 years, Occu.: Service,

6A & 6B R/o.: Ram Peth, Jalgaon
- 6C. Sapna Bhaushan Bharambe,
Age : 32 years, Occu.: Household,
R/o.: Village Asoda,
Taluka & District : Jalgaon
7. Dyaneshwar Sitaram Nemade,
Age : 57 yeas, Occu.: Labour,
R/o.: Maruti Peth, Jalgaon
8. Rukhminibai Dattatray Rade,
Deceased through legal representatives
- 8A. Ravindra Dattatray Rade,
Age : 50 years, Occu.: Agriculturist,
R/o.: Near Math, Bhadli,
Taluka & District : Jalgaon
- 8B. Kishor Dattatray Rade,
Age : 48 years, Occu.: Agriculturist,
R/o.: Plot No.4, Gut No. 104,
Near Kilbil School, Old Bhagwan
Nagar, Jalgaon, Tq. & Dist. : Jalgaon
9. Chudaman Shankar Lokhande,
Age : 75 years, Occu.: Agril.,

8 & 9 R/o.: Village Bhadli,
Taluka and District : Jalgaon

10. Kalpana Pralhad Patil,
Age : 51 years, Occu.: Household,
R/o.: Jalgaon Khurd,
Tq. Bhusawal, Dist. Jalgaon **RESPONDENTS**

....
Mr. S. H. Tripathi, Advocate for the Appellant
Mr. Anand P. Bhandari, Advocate for Respondent Nos.1 & 2
....

CORAM : SANDIPKUMAR C. MORE, J.

RESERVED ON : 16/07/2024

PRONOUNCED ON : 08/10/2024.

JUDGMENT :

1. Heard finally at admission stage.
2. The appellant, who is original defendant No.1ee in Special Civil Suit No. 63 of 2001, is challenging the judgment and order dated 10/04/2023 passed by the learned District Judge-5, Jalgaon i.e. the learned first appellate court in Civil Miscellaneous Application No.250 of 2017 whereby her application seeking condonation of delay of 2 years 1 month and 20 days in filing regular civil appeal, has been rejected. The present respondent Nos.1 & 2 are the original plaintiffs in the aforesaid suit.

3. Background facts are as under :

The present respondent Nos.1 & 2 had filed Special Civil Suit No.62 of 2001 against present appellant as well as respondent Nos.3 to 10 for specific performance of contract in respect of suit properties namely lang Gat No.52 and land Gat No.53, situated at village Kusumba Khurd, Taluka & District : Jalgaon. On 02/05/2015, the learned trial court i.e. 2nd Joint Civil Judge (Senior Division), Jalgaon decreed the suit and the present appellant as well as respondent Nos.3 to 10 were directed to execute sale deed of the suit properties in favour of present respondent Nos.1 & 2. Being aggrieved thereby, the present appellant had filed regular civil appeal alongwith Civil Miscellaneous Application No.250 of 2017 for condonation of delay of the period mentioned above. However, on 10/04/2023 the learned first appellate court rejected the aforesaid delay condonation application and consequently the regular civil appeal also got dismissed automatically. Hence, this second appeal.

4. The learned counsel for the appellant submitted that the learned first appellate court has taken a hyper technical view in dismissing the delay condonation application under the judgment and order. According to him, this court and the Hono'ble Apex

Court in many judgments, have taken a liberal approach while dealing with the application of condonation of delay. According to him, the valuable right of the appellant of filing appeal, is lost. In support of his submission, he relief upon following judgments.

- A) *Perumon Bhagvathy Devaswom Perinadu Village vs. Bhargavi Amma (dead) by L.Rs and others, reported in AIR 2009 SC (Supp) 886;***
- B) *Narhari s/o Shrawan Moon vs. Silas s/o Kannobaji Punwatkar and others, reported in 2022(3) Mh.L.J.;***
- C) *Yashwant Hariparit (since deceased) through His Legal Heir Sandip Balkrishna Parit and others vs. Sunita Ashok Bhandare and others, reported in (2020) 2 Mah. LJ 191;***
- D) *Civil Application No.2636 of 2024 in SA No. 890 of 2016 (Sandhya Santosh Kyatamwar L.Rs. Santosh Sayanna Kyatamwar and others vs. Yeshwant Dattatrya Dipak and others, of this court passed on 07/03/2024;***
- E) *Collector, Land Acquisition, Anantnag and another vs. Mst. Katiji and others, reported in AIR 1987 SC 1353;***
- F) *Raheem Shah and another vs. Govind Singh and others, reported in 2023 SCC OnLine SC 910;***

- G) *Sonerao Sadashivrao Patil and another vs. Godawaribai Laxmansingh Gahirewar and others, reported in AIR 1999 Bombay 235;***
- H) *Shewantabai wd/o Kashinath Kumbhare (since deceased) Suresh Kashinath Kumbhare and others vs. Purushottam s/o Mahadeorao Ambatkar, reported in 2014(2) Mh.L.J. 848 and***
- I) *Ram Kumar Agarwal and another vs. Thawar Das (dead) Through LRS, reported in (1999) 7 SCC 303;***

5. On the contrary, the learned counsel for respondent Nos.1 & 2, who are the original plaintiffs, strongly opposed submissions made on behalf of the appellant. He pointed out that the impugned judgment and order is self-explanatory. According to him, the present appellant has abused the process of law by suppressing material facts on record and filed frivolous application for condonation of delay despite taking active part in the proceeding before the learned trial court. According to him, pending writ petition as well as the partition proceeding filed by the appellant, have no bearing at all on the present matter. He submitted that a party causing deliberate delay should not be spared. He also relied upon following judgments.

- A) ***P. K. Ramchandran vs. State of Kerala and another, reported in AIR 1998 SC 2276;***
- B) ***Brijitha vs. Kuttiyamma, reported in 2012 STPL 6195 Kerala;***
- C) ***Nagar Palika Nigam Gwalior vs. Motilal Munnalal, reported in 1997 STPL 1184 MP;***
- D) ***Maniben Devraj Shah vs. Municipal Corporation of Brihan Mumbai, reported in AIR 2012 SC 1629;***
- E) ***In civil appeal arising out of SLP © No.15793 of 2019 (Ajay Dabra vs. Pyare Ram and others) dated 31/01/2023.***

6. It is significant to note that the Hon'ble Apex Court in the case of ***Collector, Land Acquisition, Anantnag and another vs. Mst. Katiji and others, reported in AIR 1987 SC 1353*** as well as in the case of ***Sonerao Sadashivrao Patil and another vs. Godawaribai Laxmansingh Gahirewar and others, reported in AIR 1999 Bombay 235***, has taken a view that a liberal approach needs to be adopted by the courts in dealing with the application for condonation of delay. Further, the Hon'ble Apex Court in the case of ***Raheem Shah and another vs. Govind Singh and others, reported in 2023 SCC OnLine SC 910***, has observed that when the parties were litigating with regard to the right over

immovable properties and substantial rights were to be decided between the parties, the delay could have been condoned by the lower appellate court. Further in case of ***Shewantabai wd/o Kashinath Kumbhare (since deceased) Suresh Kashinath Kumbhare and others vs. Purushottam s/o Mahadeorao Ambatkar, reported in 2014(2) Mh.L.J. 848***, it is laid down that substantive remedy of appeal would be available against such refusal to condone delay which, in fact, results in decision of the first appeal itself. It is also observed that hyper technical approach should not be adopted while considering the prayer for condonation of delay. Further, in the case of ***Ram Kumar Agrawal and another vs. Thawar Das (dead) through LRS., reported in (1999) 7 SCC 303***, it is observed that merely the decree under appeal has been executed for want of a stay order from the superior court, the right of the judgment-debtor to prosecute the appeal does not become useless. All these judgments are relied upon by the learned counsel for the appellant.

7. However, in the case of ***P. K. Ramchandran vs. State of Kerala and another*** (*supra*), the Hon'ble Apex Court has observed that law of limitation may harshly affect a particular party but it has to be applied with all its rigour when the statute so prescribe

and the courts have no power to extend the period of limitation on equitable grounds. In the case of **Maniben Devraj Shah vs. Municipal Corporation of Brihan Mumbar** (*supra*) the Hon'ble Apex Court has specifically held that the cause shown by the corporation for delay in filing of an appeal whole unsatisfactory and the reasons assigned by the learned single judge for condoning more than 7 years delay cannot but be treated as poor apology for the exercise of discretion by the court under Section 5 of the Limitation Act. Further, in the case of **Ajay Dabra vs. Pyare Ram and others** (*supra*) the Hon'ble Apex Court has observed that insufficient funds could not have been a sufficient ground for condonation of delay. These judgments are relied upon by the learned counsel for respondent Nos.1 & 2.

8. By considering the views expressed in the aforesaid citations, it can be seen that the court must take liberal view while condoning the delay, but if such delay is found to be a deliberate one and by suppressing the material fact, then there cannot be any condonation of such delay. Further, the circumstances for condoning delay are different for each case and therefore, the application for condonation of delay needs to be considered in the light of its own facts. Here in this matter by going through the

documents on record it appears that the appellant had raised following grounds for causing such delay of 2 years 1 month and 20 days in filing regular civil appeal.

- i) *She was in grief due to sad demises of her husband and father-in-law on 01/10/2011 and 30/07/2015 respectively;*
- ii) *She was not having knowledge of the decree in the aforesaid civil suit which she subsequently got after receipt of summons in special execution proceeding No.14 of 2015.*
- iii) *She was having responsibility of her children and was not aware about the legal proceeding as she was residing in Madhya Pradesh.*
- iv) *She had already sent the documents to her lawyer at Aurangabad High Court but due to high expenses in respect of court fees and legal fees, she could not file the appeal in time.*

8. However, on going through the impugned judgment it appears that when the Special Civil Suit No.62 of 2001 was filed in the year 2001, she was brought on record as a legal representative of her parents in the suit on 05/03/2009 and thereafter appeared on 02/11/2009 through her lawyer. However, she did not file any written statement but her advocate substantially cross-examined witnesses of present respondent Nos.1 & 2 within the period from

25/11/2013 to 13/01/2014. Thereafter, the appellant failed to adduce any evidence and despite having knowledge of pendency of the said suit, she alongwith her advocate remained absent and therefore, on 02/05/2015 the suit was partly decreed. Then she filed Civil Miscellaneous Application No.250 of 2017 on 24/06/2017 by condoning the delay period but prior to that the present respondent No.6 had also filed an appeal against the said civil suit by filing Civil Miscellaneous Application No.166 of 2015 for condonation of delay on 31/10/2015. The applicant was even served in that application on 25/01/2016 but she remained absent. The delay condonation application filed by respondent No.6 was in fact allowed and his appeal was registered as Regular Civil Appeal No.2 of 2017 but ultimately it was dismissed for want of steps.

9. Not only this but after the decision of Special Civil Suit No.62 of 2001 respondent Nos.1 & 2 filed execution bearing No.14 of 2015 and in the said execution proceeding, the present appellant on account of engaging lawyer, took various adjournments. Ultimately, she appointed advocate Gupta on her behalf and again sought adjournments. Then she filed an objection petition in the said execution proceeding on 28/12/2015 but the same was rejected by

the executing court on 29/04/2017. Thereafter present respondent Nos.1 & 2 filed an application for appointment of court commissioner on behalf of the appellant for executing the sale deed and accordingly a court commissioner was appointed to that effect. Then on 22/06/2017 the said court commissioner executed sale deed at Exhibit-26 on behalf of the appellant. It is extremely important to note that all these facts found suppressed by the appellant in her delay condonation application. Further, it has also come on record that other defendants in the aforesaid Special Civil Suit No.62 of 2001 have already executed sale deeds of the plots falling to their respective shares in favour of the present respondent Nos.1 & 2 / plaintiffs.

10. Thus, it is clearly evident from the aforesaid facts that the appellant not only mentioned the false reasons for condonation of delay in her application but also suppressed the material facts from the learned first appellate court. It is now settled that the party coming with unclean hands before the court and by suppressing material facts can be thrown out from the litigation at any stage. Here the appellant not only failed to give sufficient cause for condonation of delay but by suppressing the facts from record she

has played fraud upon court. As such, she is definitely not entitled for the equitable relief of condonation of delay.

11. The learned counsel for the appellant also tried to submit that the appellant had also filed civil litigation for securing her share in the properties of her father. The impugned judgment indicates that one Civil Appeal No.123 of 2017 is pending in the court to that effect. However, present respondent Nos.1 & 2 are not party in the suit from which the appeal has arisen. Moreover, the writ petition which is filed by the appellant in this court and pending, is in fact filed for challenging the appointment of court commissioner in the execution proceeding. However, though the said writ petition is pending but it appears that it has become infructuous since the court commissioner after appointment has executed the sale deed in favour of respondent Nos.1 & 2 on behalf of the appellant. It is important to note that while fixing the appeal for final hearing at admission stage, this court has formulated the only substantial question of law as follows:

“Whether the learned first appellate court erred in refusing to condone the delay by treating it as deliberate one” ?

12. However, considering all the aforesaid aspects, the finding of the learned first appellate court that the delay was a deliberate attempt of misusing the process of law, definitely appears proper. Therefore, considering all these facts, no substance is there or any substantial question of law as raised in this matter and resultantly, the second appeal stands dismissed alongwith pending civil applications, if any.

13. Interim relief granted, if any, stands vacated.

(SANDIPKUMAR C. MORE, J.)

14. After pronouncement of the judgment, the learned counsel for the appellant requested to continue the interim relief granted by this Court vide order dated 02/05/2023. The learned counsel for respondent Nos. 1 and 2 strongly opposed the same on the ground that, the appeal of the appellant has been dismissed on merits. However, since the appellant wants to challenge this order before the Superior Court, the interim relief under order dated 02/05/2023, is continued till further period of four weeks only.

(SANDIPKUMAR C. MORE, J.)