



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

SECOND APPEAL NO.947 OF 2022

Rukhmabai Shriram Patil

...Appellant

Versus

Vinod Atmaram Patil

...Respondent

Adv. Ankush Nivrutti Nagargoje for Appellant.

Mr. S. P. Tiwari h/f. Mr. A. K. Tiwari for Respondent.

CORAM : S. G. CHAPALGAONKAR, J.

DATED : 22nd NOVEMBER 2024.

P.C.:-

1. The Appellant-Original Plaintiff takes exception to the judgment and decree dated 22nd August 2022, passed by learned District Judge 5, Jalgaon in Civil Miscellaneous Application No.469 of 2019.

2. Mr. A. N. Nagargoje, learned Advocate appearing for the Appellant submits that Appellant/Plaintiff instituted Regular Civil Suit No.119 of 2011 before learned Civil Judge, Junior Division, Jamner for relief of perpetual injunction against Respondent/Defendant claiming his ownership and possession over the suit land, bearing Gat No.559/1B/2A, admeasuring 79 R, situated at village Shendurni. The Respondent/ Defendant owns 32 R land in Gat No.559/2 on Western side of Appellant's land. Since Respondent was attempting to encroach

upon Appellant's land by destroying common bandh, present suit has been instituted. The Defendant refuted the pleadings in the plaint, so also raised counter claim for injunction against the Appellant. The Trial Court dismissed suit as well as counter claim vide order dated 25th October 2018.

3. The aggrieved Plaintiff filed appeal before District Judge at Jalgaon along with Civil Miscellaneous Application No.469 of 2009 seeking to condone delay of 212 days. In support of her contentions, she recorded her own evidence explaining delay. However, Appellate Court adopted hyper technical approach and refused to condone the delay vide impugned order dated 22nd August 2022.

4. Per contra, Mr. S. P. Tiwari, learned Advocate appearing for the Respondent supports the impugned order. He would submit that Appellant failed to justify inordinate delay of 212 days caused in filing the appeal. The reason given by her was not supported by adequate material. Consequently, the Appellate Court was justified in passing the impugned order. In support of his contentions, he relied upon the observations of this Court in case of *Victor Albuquerque Vs. Saraswat Co-operative Bank Limited & Ors.*¹.

1 1998 (2) Mh.L.J. 437

5. Having considered submissions advanced, the following substantial questions of law arises for consideration:-

(i) Whether the first Appellate Court is justified in rejecting the prayer for delay condonation in light of reasons stated in application, particularly when the Respondent has not controverted evidence tendered by Appellant in support of reasons for delay?

(ii) Whether the First Appellate Court is justified in concluding that the Appellant failed to make out sufficient cause within the meaning of Section 5 of the Limitation Act, in facts and circumstances of the present case?

6. Looking to the limited controversy, learned Advocates appearing for the respective parties were called upon to advance their submissions on the aforesaid substantial questions of law. Accordingly, they advanced final arguments justifying respective stands.

7. Before embarking upon the controversy involved, it is apposite to refer to the observations of the Supreme Court in the case of *Collector, Land Acquisition, Anantnag & Anr. Vs. Katiji & Ors.*². The Supreme Court observed that the legislature confirmed the power to condone the delay by enacting Section 5 of the Indian Limitation Act,

² (1987) 2 SCC 107

1963 in order to enable the courts to do substantial justice to the parties by disposing of the matters on merits. The expression “sufficient cause” employed by legislature is adequately elastic to enable Courts to apply the law in a meaningful manner which subserve the ends of the justice. The Supreme Court further observed that ordinarily litigant does not stand to benefit by lodging an appeal late hence refusing to condone the delay can result in a meritorious matter being thrown out at the very threshold and cause of justice being defeated, when substantial justice and technical considerations are fitted against each other, the cause of substantial justice deserves to be preferred.

8. In light of the aforesaid observations, if the facts of the present case are considered, it can be noted that Appellant is a lady aged about 69 years, depending upon agriculture income. She instituted suit to protect her right in respect of the suit land, which according to her was under threat of encroachment at the hands of Respondent. She suffered dismissal of the suit and while approaching the Appellate Court, delay of 212 days has been caused. To explain the delay, she states that on 19th November 2018, the certified copies of the judgment and decree were received. However, meanwhile, there were talks for settlement of dispute and Appellant was advised not to file the appeal before the District Court. However, again in the month of June

while the agriculture operations were undertaken, the Respondent relying upon the judgment of Trial Court obstructed cultivation of the land. Consequently, she has been compelled to file appeal. As such delay has been occasioned.

9. The District Court observed that Appellant failed to place on record evidence as regards to so called compromise as pleaded by her. During cross-examination, she stated that one Mr. Shimpi, Police Officer at Shendurni Police Station intervened, but he is not examined as witness. It is difficult to countenance with the observations of First Appellate Court. The Respondent has merely denied the contentions raised in application, but failed to step in witness box to refute contentions of Appellant regarding mutual settlement and face the cross-examination. Normally, the agricultural operation starts in the month of June, the possibility that the Respondent accepted to settle the claim and then raised obstruction to cultivation by Appellant in month of June cannot be ruled out. The Appellant filed appeal on 8th July 2019, which is very much in consonance with her contentions.

10. Looking to the age of Appellant and nature of dispute, it cannot be expected that she would explain delay of each and every day. The Appellant has not derived advantage by making delay. The equities can be adjusted by granting reasonable cost to Respondent. However, it would be appropriate that matter goes back to Appellate

Court for decision on merit. Consequently, both substantial questions of law framed above are answered in negative.

11. In result, second appeal deserve to be allowed as under:-

- (i) The judgment and order dated 22nd August 2022 passed by the learned District Judge-5, Jalgaon in Civil Miscellaneous Application No.469 of 2019 is hereby quashed set aside.
- (ii) Civil Miscellaneous Application No.469 of 2019 is allowed. The delay of 212 days caused in filing the appeal is hereby condoned, **subject to condition that appellant pays cost of Rs. 5000/- to respondent within four weeks from date fixed for appearance of parties before first appellate court.**
- (iii) Regular Civil Appeal be registered and taken up for hearing in accordance with law.
- (iv) The parties shall appear before the District Court on 10th January 2025.

(S. G. CHAPALGAONKAR, J.)