



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

SECOND APPEAL NO.13 OF 2022

1. Ashok Ratilal Shaha,
2. Amol Ratilal Shaha. ...Appellants

Versus

1. Rajashri Ramaniklal Shaha,
2. Santosh Ramaniklal Shaha,
3. Sarang Ramaniklal Shaha,
4. Sadhana Ramaniklal Shaha,
5. Hanumant Digambar Godse,
6. Vijay Digambar Godse,
7. Bharat Ghorakh Suravase,
8. Bibhishan Gorakh Suravase. ...Respondents

Mr. M. U. Shelke for Appellants.

Mr. S. Y. Mahajan for Respondent Nos.1 to 8.

CORAM : S. G. CHAPALGAONKAR, J.

DATED : 12th NOVEMBER 2024.

P.C.:-

1. The present appeal takes exception to the order dated 21st July 2020 passed by learned District Judge-1, Bhoom in M.C.A. No.22 of

2020 by which the prayer of the Appellants (Original Plaintiffs) seeking to condone the delay of one year 17 days caused in filing appeal against judgment and decree dated 4th July 2019, passed by learned 2nd Joint Civil Judge, Junior Division, Paranda, District Osmanabad, in Regular Civil Suit No.405 of 2013 has been rejected.

2. Mr. Shelke, learned Advocate appearing for the Appellants submit that the Appellants are Original Plaintiffs in Regular Civil Suit No.405 of 2013. The Trial Court dismissed their suit vide judgment and decree dated 4th July 2019. Although appellants decided to file appeal, due to illness of mother and exigency of the business, they could not approach appellate court within stipulated period of limitation. Further in month of March 2020, due to outbreak of Covid-19 pandemic, the movement was restricted. Thereafter, on 21st July 2020, the appeal could be filed along with application for condonation of delay. He would submit that the Appellants are litigating over right in respect of immovable properties, the delay is unintentional. The Appellants have not derived advantage by making the delay. The First Appellate Court adopted higher technical approach and rejected the application filed under Section 5 of the Limitation Act, 1963. He would, therefore, urge that the delay needs to be condoned.

3. Per contra, Mr. Mahajan, learned Advocate appearing for Respondent Nos.1 to 8 vehemently opposed the appeal. He would submit that the delay of 1 year and 17 days has not been explained. No sufficient cause is made out. The application is cryptic and sans adequate reasons. The particulars of illness of mother are not elaborated, no evidence regarding exigency of business is tendered. Although, the Covid-19 pandemic situation persisted in March 2020, the Appellants had ample time of more than six months for preferring an appeal. They had already procured the certified copies of judgment and decree on 3rd August 2019, the period upto March 2020 is not explained. The First Appellate Court has rightly rejected the application.

4. Considering the submissions advanced, by consent parties, appeal is finally heard on following substantial question of law:-

- (i) Whether, in facts of the case First Appellate Court erred in rejecting the prayer for delay condonation?

5. It is not in dispute that the parties are litigating for the right in respect of an immovable property. The Appellants instituted suit for possession of the suit property and perpetual injunction. The Trial Court dismissed the suit on 4th July 2019. The certified copies were applied on 5th July 2019 and delivered on 3rd August 2019, whereas the appeal

along with application has been filed on 21st July 2020. Undisputedly in March 2020, the Covid-19 pandemic situation persisted, and restriction on movements were imposed. If limitation period is counted from 3rd August 2019, the appeal ought to have been filed on or before 1st November 2019. The Appellants have given the reason of illness of their mother so also the business exigency. However, no particulars are mentioned in the application, nor have they tendered evidence. However, fact remains that even Respondents failed to bring on record any evidence to controvert contentions in application. They have simply denied the averments. Both the parties have not recorded the evidence in support of respective contentions. The explanation given by the Appellants is plausible, although not supported by elaborate reasons. Further looking to the nature of dispute and controversy as regards to right over landed property, it was necessary for appellate court to take pragmatic view in the matter of condonation of delay. The Appellate Court failed to consider the aforesaid aspects and ventured into the technicalities. Pertinently, appellate court failed to advert to pandemic situation and its consequences which is also one of the reasons given for delay. Apparently appellate court failed in error while rejecting application for delay condonation. In facts of case equities can be balanced by granting cost of Rs. 25000/- to respondents.

6. In that view of the matter, the substantial question of law is answered in the affirmative. The second appeal is allowed. The M.C.A. No.22 of 2020 filed before First Appellate Court stands allowed by setting impugned order subject to deposit of cost of Rs.25,000/- by appellant before the First Appellate Court within period one month from today. On deposit of cost respondents shall be permitted to withdraw the same. Appeal be registered and heard on merit in accordance with law.

(S. G. CHAPALGAONKAR, J.)