

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
SECOND APPEAL NO. 252 OF 2019
WITH
CIVIL APPLICATION NO. 526 OF 2019
IN
SECOND APPEAL NO. 252 OF 2019**

Smt. Madhavi Vikram @ Udale Mule,
Age : 44 Years, Occupation : Primary Teacher,
C/O. Rajaram Ramchandra Waykar,
Shegaon, Tal. Walwa, Dist Sangli. .. Appellant

Versus

Shri. Prakash Dattu Chougule,
Age : 58 Years, Occupation : Agri.,
R/O. Brahmnal, Tal. Tasgaon, Dist. Sangli. .. Respondent

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Mr. S. A. Rajeshirke a/w Mr. Gautam R. Kulkarni, for Appellant.

Mr. Umesh R. Mankapure, for Respondent.

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**CORAM : SANDEEP V. MARNE J.
RESERVED ON : 15 FEBRUARY 2024.
PRONOUNCED ON : 26 FEBRUARY 2024.**

JUDGMENT :-

1) By this Appeal, Appellant challenges Order dated 20 June 2018 passed by the Learned District Judge, Sangli, dismissing Civil Miscellaneous Application No. 177 of 2015 filed by her seeking condonation of delay of 4 years and 6 months 19 days in filing Appeal before the first Appellate Court challenging the decree dated 30 November 2010 passed by Civil Judge, Junior Division, Miraj in Regular Civil Suit No. 485 of 2000.

2) Appellant married Vikram alias Uday Chandrakant Mule, on 26 April 1994. On 4 June 1996 she purchased the suit property bearing Gat No. 377 admeasuring 2 Hectares 10 Ares in Village Arag, Taluka Miraj, District Sangli by way of registered Sale-deed executed by Plaintiff's father Dattu Chougule. Respondent/Plaintiff filed Special Civil Suit No. 401 of 1996 in the Court of Civil Judge, Junior Division, Sangli on 22 August 1996 seeking a declaration that the Sale Deed dated 4 June 1996 executed in Appellant's favour was not binding on him and also sought injunction against Appellant from disturbing his possession. Plaintiff claims that the suit property was joint family property and that his father did not have authority to sell the same. He claimed $\frac{1}{4}$ share in the suit property. It is the case of the Appellant that her husband used to look after the said suit for which she appointed him as her attorney. Appellant's husband expired on 21 December 1996 in an accident. It appears that Suit was subsequently transferred to Civil Judge, Junior Division, Miraj and numbered Regular Civil Suit No. 485 of 2000. The suit was dismissed for default on 3 March 2003. The suit was restored on 12 November 2008 and Appellant received summons in the year 2010 and she remained present before the Trial Court on 22 June 2010. However, it appears that, she did not file her written statement. The suit thus proceeded without written statement and came to

be decreed on 30 November 2010. The Trial Court declared that Sale Deed dated 4 June 1996 executed in Appellant's favour was illegal and not binding on Plaintiff.

3) Appellant did not take immediate steps to challenge the decree dated 30 November 2010. She decided to file Appeal against the decree of the Trial Court before District Judge, Sangli and filed Civil Miscellaneous Application No. 177 of 2015 for Condonation of Delay of 4 years 6 months and 19 days in filing the Appeal. By the Order impugned in the present Appeal passed by the District Court on 20 June 2018, Appellant's Application for Condonation of Delay has been rejected. Aggrieved by the District Court's decision, Appellant has filed the present Appeal.

4) When the Appeal was listed for admission, this Court has admitted the same by formulating following substantial questions of law:

i) Whether there is an error on the part of the First Appellate Court in appreciating the evidence on record while rejecting the application for condonation of delay?

ii) Whether there is any willful misrepresentation or suppression on the part of Appellant while seeking discretionary relief of condonation of delay?

5) With the consent of the learned counsel appearing for the parties and considering the narrow controversy involved in the present Appeal, the same was taken up for hearing. Both the learned counsel have been extensively heard on the questions of law formulated while admitting the Appeal.

6) Mr. Rajeshirke the learned counsel appearing for the Appellant would submit that she was prevented from filing Appeal against Trial Court's decree within reasonable time. That the entire litigation was earlier looked after by her husband, who unfortunately expired in an accident on 21 December 1996. That after her husband's death, she started residing with her father and it was her father who looked after her entire affairs including the litigation. That being a widow, she depended fully on the assistance provided by her father. After receipt of suit summons in the year 2010, her father fell seriously sick and was required to be hospitalized. He went in coma and remained hospitalized even during 2011. He was also required to be treated for psychological issues. She was therefore unable to attend to the litigation instituted by the Plaintiff against her. That she learnt about the decree only in January 2015 when she received a notice from Sub Divisional Officer, Miraj.

7) Mr. Rajeshirke would further submit that the First Appellate Court has not properly appreciated the explanation put forth by the Appellant for condonation of delay. That Appellant led evidence in support of her contentions raised in the Application. That mere educational background or service of Appellant does not make her able to look after litigation which was always looked after by her husband and father. He would submit that the Appellate Court has not taken into consideration the fact that Plaintiff himself was negligent in prosecuting the suit, which remained dismissed for non-prosecution for a considerable period of time from 2003 to 2008. That in such circumstances, the First Appellate Court ought to have condoned the delay which would only enable the Appellant to argue the Appeal on merits.

8) *Per contra* Mr. Mankapure the learned counsel appearing for the Respondent would oppose the Appeal and support the Order passed by the

First Appellate Court. He would submit that Appellant did not approach the First Appellate Court with clean hands. That she falsely pleaded in her Application that she is a homemaker suppressing the fact that she is actually employed as a teacher in a school. That she is a well-educated lady fully capable of handling the litigation. That the pretext of illness of father is totally fallacious as no documentary evidence was placed on record to prove father's illness. That on the other hand she admitted in her cross-examination that she did not take any leave to attend to her father during the years 2010 or 2011. That it is settled principle of law that suppression of material facts disentitles a party from seeking discretionary reliefs. Condonation of delay, being discretionary power of First Appellate Court, it has rightly not exercised the said discretion in favour of Appellant, considering her conduct. That this Court would be loathe in interfering in the exercise of Appellate Court's discretion under Section 100 of the Code of Civil Procedure, 1908. In support of his contention Mr. Mankapure would rely upon *Ved Prakash Vs. Rajneesh Kumar and Anr.*¹, *Ramjas Foundation and Anr. Vs. Union of India & Ors.*² and *Esha Bhattacharjee Vs. Managing Committee of Raghunathpur Nafar Academy and Ors.*³

9) Rival contentions of the parties now fall for my consideration.

10) The short issue that arise for consideration in the present Appeal is about correctness of discretion exercised by the First Appellate Court in rejecting Appellant's application for condonation of delay of 4 years 6 months and 19 days in filing the Appeal for challenging the decree dated 30 November 2010. Before I go into the explanation adduced by Appellant for condonation of delay and correctness of findings recorded by the First

¹ 2019 SCC Online HP 2112

² (2010) 14 SCC 38

³ (2013) 12 SCC 649

Appellate Court, it would be necessary to take brief overview of the exact dispute between the parties.

11) Plaintiff approached the Trial Court by filing Regular Civil Suit No. 401 of 1996, which was renumbered as Regular Civil Suit No. 485 of 2000 upon transfer to the Court of Civil Judge Junior Division, Miraj. He sought a declaration that Sale-deed dated 4 June 1996 executed in favour of Appellant was not binding on him. Plaintiff's case in the plaint is that the suit property bearing Gat No. 377 admeasuring 2 Hectares 10 Ares was originally owned by his grandfather Babu Govind Todkar. That his father purchased the suit property by Sale deed dated 7 March 1968. That the suit property is joint family property and that his grandfather sold it to his father as Karta of family by Sale Deed dated 7 March 1968 on acceptance of nominal consideration. Plaintiff further pleaded that his father was alcoholic and was unable to understand consequence of his actions and in an inebriated condition, he executed Sale deed dated 4 June 1996 in Plaintiff's favour. That the sale deed was executed on account of undue influence of Appellant's father in law, who was working as Circle Inspector and that his father did not receive any consideration while executing the Sale deed as it was signed by Plaintiff's father under influence of liquor. Plaintiff claimed $\frac{1}{4}$ share in the suit property and sought a declaration that the Sale deed dated 4 June 1996 is not binding on him.

12) It appears that the Sale deed dated 4 June 1996 is executed on payment of consideration of Rs.42,500/- to Plaintiff's father. Though Plaintiff contended that his father did not receive any consideration, his father Dattu Tayyappa Chougule did not file any proceedings complaining about non receipt of any consideration. He was alive when Plaintiff instituted the Suit. Be that as it may. Appellant was apparently at a very young age of 22 years

at the time of execution of the Sale deed. Two years before execution of Sale deed, she was married to Vikram alias Uday Mule and shortly after execution of the Sale deed she lost her husband in an accident on 21 December 1996.

13) It appears that Plaintiff's application for temporary injunction was rejected by the Trial Court which Order was challenged by him before District Court at Sangli. It also appears that Appellant's name was mutated to the revenue records in respect of the suit property on the strength of Sale deed dated 4 June 1996. Plaintiff had initiated proceedings before revenue authority challenging mutation entry which was decided against him on 11 January 2002. The Order of refusal of temporary injunction was also unsuccessfully tested and his Civil Miscellaneous Application No. 129 of 1997 was rejected by the Appellant Court on 18 February 2003. In the meantime, Plaintiff's suit came to be dismissed for non-prosecution on 3 March 2003. For five long years the suit remained dismissed and came to be restored on 12 November 2008. After restoration, the summons was apparently issued in the suit which was received by the Appellant sometime in the year 2010. Appellant apparently presented herself before the Trial Court on 22 June 2010 and sought adjournment. However, she did not file written statement on account of which, the suit proceeded without any defence. This is how the suit came to be decreed on 30 November 2010 in absence of any defence by the Appellant. This is the broad background in which the suit came to be decreed by the Trial Court.

14) Coming to the explanation given by the Appellant for seeking condonation of rather inordinate delay of 4 years 6 months and 19 days, she pleaded in her application that she was prevented from looking after litigation on account of her father's ill health. She also pleaded that she is widow and does not have anyone else to look after her. Appellant adduced

evidence in support of her pleadings in the Application for condonation of delay. In her evidence, she stated that her father was looking after the suit after its restoration and that her father engaged an Advocate to defend the suit. However, her father was continuously sick in the year 2010. He was hospitalized and remained in Coma for long period of time. That even in 2011 also he was hospitalized with Dr. Kudalkar. That her father was also treated for psychological disorders. That she was under mental stress on account of ill health of her father and could not take steps to defend the suit. Appellant produced several documents in support of her application for condonation of delay, which included various medical certificates relating to treatment of her father. Perusal of the Order passed by First Appellate Court would indicate that the said Medical certificates are not taken into consideration by it while recording a finding that the allegations about the illness of father are vague. Appellant placed reliance on several prescriptions and diagnostic documents as well as certificate of Doctor with apparently suggest that he was suffering from psychosomatic disorder and Atonic Epilepsy. He was also hospitalized in August 2015 in semi-conscious condition. There is absolutely no discussion by the First Appellate Court in the impugned Order about the documents produced by Appellant. The First Appellate Court has recorded an erroneous finding that the allegation about illness of father of vague without considering the evidence on record. The finding is thus perverse.

15) Much has been said about conduct of the Appellant in showing herself as homemaker in the cause title of the application and claiming advantage of being a widow. It has come in evidence that Appellant is employed as teacher in the school. Her claim of sickness of her father was sought to be demolished by admission given by her in the cross examination that she did not avail long leave during 2010 and 2011. First Appellate Court

has disbelieved Appellant's case of sickness of her father on the basis of she not availing a long leave. It is also sought to be contended that if she was able to look after her father without availing leave, she could have as well looked after litigation initiated against her.

16) In my view, mere failure to avail long leave does not *ipso facto* belie the assertion of sickness of her father. Sickness of her father is proved on the basis of documentary evidence and Appellant not availing leave for longer duration does not disprove the same. It must also borne in mind that Appellant is a single lady and dependent on her job and may have thought it prudent not to avail leave for longer duration to look after her father with a view to ensure that her source of livelihood is not endangered. Appellant has pleaded that her father used to look after the litigation, and this is where her status as a widow can be relevant. Her assertion of father looking after litigation cannot disbelieved. When seen from the angle of her assertion that father was looking after litigation, the factum of ill health of father assumes importance.

17) Mr. Mankpure has accused Appellant of indulging in gross suppression of facts by concealing her service as teacher and falsely claiming in the Application for Condonation of delay that she is a 'homemaker'. I am not convinced that there is any willful suppression on Appellant's part before the first Appellate Court. Appellant has disclosed her status as primary teacher in the cause title of the Appeal. Her status as homemaker got reflected in the application for condonation of delay apparently because the cause title was simply copied from the one from plaint. It was Plaintiff, who declared her status as homemaker in the plaint, which got simply copied in the cause title of application seeking condonation of delay. I am therefore not convinced there was any ill intention on the part of the Appellant in

suppressing her status as teacher while filing the application for condonation of delay. She did not claim financial difficulties as a reason for condonation of delay and therefore non-declaration of her employment as teacher in the application was inconsequential. I am therefore of the view that there is neither any misrepresentation nor suppression of facts on the part of Appellant.

18) No doubt the delay in filing the Appeal is bit longer. However, considering the nature of litigation as well as Respondent's own conduct in prosecuting the suit which remained dismiss for non-prosecution for 5 long years, an opportunity needs to be given to the Appellant to assert her rights in respect of the property purchased by her. The suit property was purchased by Plaintiff's father and in the light of this position, Plaintiff's assertion of having a share therein needs to be examined in the Appeal sought to be filed by the Appellant. Considering the peculiar facts and circumstances of the case, I am of the view that an opportunity needs to be extended to the Appellant to prosecute her Appeal.

19) Mr. Mankapure has relied upon Judgment of the Apex Court in ***Esha Bhattacharjee*** (supra) in which the Apex Court has deduced broad principles relating to Condonation of Delay in para 21 as under:

“21. From the aforesaid authorities the principles that can broadly be culled out are:

21.1. (i) There should be a liberal, pragmatic, justice-oriented, non-pedantic approach while dealing with an application for condonation of delay, for the courts are not supposed to legalise injustice but are obliged to remove injustice.

21.2. ii) The terms “sufficient cause” should be understood in their proper spirit, philosophy and purpose regard being had to the fact that these terms are basically elastic and are to be applied in proper perspective to the obtaining fact- situation.

21.3. iii) Substantial justice being paramount and pivotal the technical considerations should not be given undue and uncalled for emphasis.

21.4. iv) No presumption can be attached to deliberate causation of delay but, gross negligence on the part of the counsel or litigant is to be taken note of.

21.5. v) *Lack of bona fides imputable to a party seeking condonation of delay is a significant and relevant fact.*

21.6. vi) *It is to be kept in mind that adherence to strict proof should not affect public justice and cause public mischief because the courts are required to be vigilant so that in the ultimate eventuate there is no real failure of justice.*

21.7. vii) *The concept of liberal approach has to encapsulate the conception of reasonableness and it cannot be allowed a totally unfettered free play.*

21.8. viii) *There is a distinction between inordinate delay and a delay of short duration or few days, for to the former doctrine of prejudice is attracted whereas to the latter it may not be attracted. That apart, the first one warrants strict approach whereas the second calls for a liberal delineation.*

21.9. ix) *The conduct, behaviour and attitude of a party relating to its inaction or negligence are relevant factors to be taken into consideration. It is so as the fundamental principle is that the courts are required to weigh the scale of balance of justice in respect of both parties and the said principle cannot be given a total go by in the name of liberal approach.*

21.10. x) *If the explanation offered is concocted or the grounds urged in the application are fanciful, the courts should be vigilant not to expose the other side unnecessarily to face such a litigation.*

21.11. xi) *It is to be borne in mind that no one gets away with fraud, misrepresentation or interpolation by taking recourse to the technicalities of law of limitation.*

21.12. xii) *The entire gamut of facts are to be carefully scrutinized and the approach should be based on the paradigm of judicial discretion which is founded on objective reasoning and not on individual perception.*

21.13. xiii) *The State or a public body or an entity representing a collective cause should be given some acceptable latitude.”*

20) In my view considering principles laid down by the Apex Court in ***Esha Bhattacharjee***, it is difficult to hold that delay caused in filing the Appeal was deliberate or that Appellant was negligent in any manner. Considering the liberal, pragmatic and justice-oriented approach, which is required to be adopted by Courts, coupled with settled principles that each days' delay need not be explained, I am of the view that the delay caused in filing of the Appeal deserves to be condoned in the facts and circumstances of the present case. These principles have been reiterated by the Apex Court in its judgment in ***Sheoraj Singh (Deceased) Through Legal Representatives And Others. Vs. Union of India and Anr.***⁴ in which it is held in 35 to 36 as under:

⁴ (2023) 10 SCC 531

“35. We find that the High Court in the present case assigned the following reasons in support of its order:

35.1. The law of limitation was founded on public policy, and that soe lapse on the part of a litigant, by itself, would not be sufficient to deny condonation of delay as the same could cause miscarriage of justice.

35.2. The expression “sufficient cause” is elastic enough for courts to do substantial justice. Further, when substantial justice and technical considerations are pitted against one another, the former woud prevail.

35.3. It is upon the courts to consider the sufficiency of cause shown for the delay, and the length of delay is not always decisive while exercising discretion in such matters if the delay is properly explained. Further, the merits of a claim were also to be considered when deciding such applications for condonation of delay.

35.4. Further, a distinction should be drawn between inordinate unexplained delay and explained delay, where in the present case, the first respondent had sufficiently explained the delay on account of negligence on part of the government functionaries and the government counsel on record before the reference Court.

35.5. The officer responsible for the negligence would be liable to suffer and not public interest through the State. The High Court felt inclined to take a pragmatic view since the negligence therein did not border on callousness.

36. Given these reasons, we do not consider discretion to have been exercised by the High Court in an arbitrary manner. The order under challenge had to be a clearly wrong order so as to be liable for interference, which it is not.”

21) Reliance of Mr. Mankapure on the judgment of the Apex Court in ***Ramjas Foundation*** (supra) is with regard to denial of relief in favour of party making misstatement or indulging in suppression of facts. In the present case Appellant’s non-disclosure of her employment as a teacher does not have much bearing on the issue of illness of her father. The main reason for seeking condonation of delay is the assertion that father used to look after the litigation and that he was sick. In my view her educational background or service as a teacher does not change the position that she was prevented by a sufficient cause on account of prolonged sickness of her father.

22) Mr. Mankapure has also relied upon judgment of Single Judge of Himachal Pradesh High Court in ***Ved Prakash*** (supra) which takes into consideration various judgments and holds that if there is suppression of

material facts or twisted facts are placed before the High Court, it would be justified in refusing to entertain Petition filed under Article 226 of the Constitution of India. Firstly, this is not a Writ Petition filed under Article 226 of the Constitution of India. Secondly no facts have been twisted before this Court. Appellant has disclosed her status as primary teacher in the cause title of the Appeal. Her status as home maker got reflected in the Application for Condonation of Delay apparently because the cause title was simply copied from the one from plaint. I am therefore of the view that there is neither misrepresentation nor suppression of facts on the part of Appellant.

23) I am therefore inclined to this exercise discretion in favour of Appellant and condone the Delay in filing the Appeal. At the same time the Appellant needs to compensate the Respondent on account of negligence and also considering the length of delay.

24) I accordingly proceed to pass the following Order:

ORDER

- i) The Second Appeal is allowed.
- ii) Order dated 20 June 2018 passed by District Judge-8, Sangli in Civil Miscellaneous Application No. 177 of 2015 is set aside and the delay in filing Appeal by the Appellant is condoned.
- iii) The Appeal presented by Appellant before the First Appellate Court shall be registered, entertained and decided on merits. All the contentions of the parties on merits of the appeal are kept upon and nothing observed in this Order shall influence the First Appellate Court, while deciding the Appeal on merits.
- iv) Appellant shall pay to the Respondent costs of Rs. 20,000/- by

depositing the same in the First Appellate Court within six weeks from today.

v) Deposit of cost shall be condition precedent for entertainment of the Appeal.

25) The Second Appeal is accordingly disposed of. In view of disposal of Second Appeal, Civil Application No. 526 of 2019 does not survive. The same also stands disposed of.

[SANDEEP V. MARNE J.]