

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
SECOND APPEAL NO. 167 OF 2024
WITH
INTERIM APPLICATION NO. 6522 OF 2024
IN
SECOND APPEAL NO. 167 OF 2024

Smt. Rashika Prashant More

.. Appellant

Versus

Mr. Alaka Sanjay Dalvi & Ors.

.. Respondents

...

Ms. B. R. Dalal a/w Mr. Sushil Sharma for the Appellant.

Mr. Shailesh Redekar a/w Mr. Sanjay N. Dhadam for the Respondents.

...

CORAM : SANDEEP V. MARNE J.

DATE : 14 MARCH 2024.

P.C. :-

1) By this Appeal, Appellant challenges Order dated 20 September 2023 passed by District Judge - 1, Gadhinglaj, Kolhapur rejecting Miscellaneous Civil Application No. 15 of 2023 filed by her seeking condonation of delay of 4842 days in filing Appeal to set up a challenge to the Decree dated 6 February 2009 passed by Civil Judge Senior Division, Gadhinglaj in Special Civil Suit No. 10 of 2004.

2) I have heard Mr. Dalal the learned counsel appearing for Appellant and Mr. Redekar the learned counsel appearing for Respondent No.1.

3) Appellant sought to challenge the Decree dated 6 February 2009 after more than 13 years and sought condonation of delay of 4842 days in filing the Appeal. Appellant chose to file one page Application in which she did not plead even a single reason as to why she was prevented from filing the Appeal in time. Rather she pleaded that sufficient and reasonable cause preventing her from contesting the matter was stated in the main Appeal. This course of action adopted by the Appellant in not pleading any cause for condonation inordinate delay in her Application is not appreciated.

4) Even if the Appeal memo tendered along with Miscellaneous Civil Application No. 15 of 2023 is perused, the only cause shown by Appellant was about alleged information given to her by Parvati Pandit Kesarkar-Defendant No.1 about her daughter (Plaintiff) claiming share in the suit premises and filing case in that regard. The Appellant pleaded that Defendant No.1 gave assurance to the Appellant that it was a family dispute which would be settled by Defendant No.1 with her daughter. This is the only cause shown by Appellant in the Appeal memo, which ought to have been ideally pleaded in the application for condonation of delay.

5) Be that as it may. The above pleading in the Appeal memo shows acquisition of knowledge by the Appellant about filing of the suit. She apparently did not make any efforts to know the result of the said litigation.

6) Mr. Redekar has submitted that for execution of the decree, the Court Commissioner paid a visit to the suit premises wherein Appellant

(Defendant No. 11) was found. She thus acquired knowledge about decision of the suit atleast on 4 May 2011, when the Court Commissioner visited suit premises for effecting partition.

7) In my view therefore, no sufficient cause was shown for condonation of inordinate delay of 4842 days in filing the Appeal against the decree dated 6 February 2009. The first Appellate Court has rightly rejected the application for condonation of delay. No substantial question of law is involved in the Appeal. Second Appeal is accordingly rejected.

8) In view of rejection of Second Appeal, Interim Application No. 6522 of 2024 do not survive and the same is accordingly disposed of.

[SANDEEP V. MARNE J.]