

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO.231 OF 2015
WITH
CIVIL APPLICATION NO.487 OF 2015

Sou. Kerabai @ Vijaymala Vishnupant
Talekar

...Appellant

Versus

Shri. Dagadu Gopal Patil And Others

...Respondents

Mr. Prashant Bhavake for the Appellant.

Mr. Chetan G. Patil for Respondent.

CORAM : SHARMILA U. DESHMUKH, J.

DATE : 1st MARCH, 2024

P. C. :

1. Being dissatisfied by the order dated 12th March 2014 passed by the Appellate Court in Civil Application No.20/2013 rejecting the Application thereby declining to condone the delay of 5 years and 5 months caused in preferring the appeal against the judgment and decree passed in Special Civil Suit No.488/2004, the original defendant No.3 is before this Court.

2. Special Civil Suit No.488/2004 was filed by the plaintiff seeking partition. The present appellant was defendant No.3 in the said

proceedings and in the written statement filed by defendant No.3 it was specifically pleaded that she has relinquished her share in the properties in favour of the plaintiff and defendant No.1, who are the brothers of defendant No.3. The Trial Court by judgment and decree dated 4th August 2007 partly decreed the Suit declaring that the plaintiff and defendant 1 and 2 have 1/3rd share each in the properties mentioned in the decree. As against this the Defendant No.1 preferred an appeal and before the First Appellate Court the defendant No.3 was arrayed as party and had appeared in the appeal proceedings.

3. The First Appellate Court dismissed the appeal of defendant No.1 as against which SLP preferred by defendant No.1 also came to be dismissed. It appears that subsequently execution proceedings have been filed by the plaintiff and thereafter the appeal was filed by defendant No.3 after delay of about 5 years and 5 months.

4. In support of the Application for condonation of delay evidence was led. The Appellate Court upon consideration of the evidence rejected the Application on the ground that the appellant was well aware of the proceedings and had also admitted her signature on the written statement filed before the Trial Court. The Appellate Court

considered that the Suit of the year 2004 had reached finality up to the Apex Court in the year 2012 and till that time appellant had not raised any objection and it is only when decree is to be executed, Appeal has been preferred. The Appellate Court held that there is no sufficiency of cause shown and rejected the Application.

5. Heard Mr. Prashant Bhavake for the Appellant and Mr. Chetan G. Patil for Respondent.

6. Mr. Bhavake, learned counsel appearing for the appellant would submit that the original defendant No.3 though being a coparcener in her own right was denied her share in the ancestral property. He submits that it is a specific case of the appellant that upon a misrepresentation that she would be given her share, signatures were obtained on the written statement which contained pleading as regards relinquishment of her share, which is not the case. He would submit that appellant was not aware of the passing of the decree and as such there was delay in filing the appeal. He would submit that considering the merits of the matter the Application may not be thrown out at the threshold and appeal is required to be adjudicated on merits. He submits that the substantial question of law which arises is the arbitrary exercise of

discretion by the Appellate Court while deciding the Application for condonation of delay.

7. *Per contra*, learned counsel appearing for respondent No.1 would submit that in the written statement defendant No. 3 had supported the case of defendant No.1 and had specifically pleaded that she has relinquished her rights in the property. He submits that the Defendant No.3 also appeared in the Appellate proceedings and as such was well aware of passing of the decree. He submits that the present Appeal is filed to support the case of defendant No.1 who failed up to the Apex Court and only thereafter Appeal was filed to stall the execution of decree of the year 2007.

8. Considered the submissions and perused the record.

9. The issue which is required to be considered is whether the Appellate Court had rightly exercised the discretion vested in it while adjudicating an Application for condonation of delay. It is settled that it is for the Appellate Court to decide sufficiency of the cause at the time of adjudicating the application for condonation of delay and in appeal proceedings the Appellate Court is only required to consider whether the

discretion exercised has been rightly exercised. The pleadings in the Application seeking condonation of delay would indicate that the same is on the merits of the matter and learned counsel for the appellant has not been able to point out any pleading setting forth the explanation in the Application for condonation of delay of 5 years and 5 months caused in preferring the Application. The Appellate Court upon appreciation of the evidence on record and after considering the admissions of the appellant admitting her signature on the written statement filed before the Trial Court, the admission was that she is aware of the proceedings right up to the Apex Court as well as upon going through the documentary evidence showing that she has received notice by signing it and had appeared in the appeal has come to a finding that no sufficient cause has been shown to condone delay.

10. The Appellate Court has rightly appreciated the oral and the documentary evidence which has come on record and has thereafter exercised jurisdiction vested in it judicially. It cannot be said that the discretion exercised by the Court is arbitrary. As such no substantial question of law arises. Appeal stands dismissed.

11. At this stage, request is made for continuation of interim

relief that execution to continue but possession not to be handed over for a further period of 8 weeks. Appeal is of the year 2015 and decree of the year 2007 has not yet been executed. In that view of the matter, I am not inclined to extend interim relief. Request is rejected.

(SHARMILA U. DESHMUKH, J.)