

MJ Jadhav

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
CIVIL APPLICATION NO. 188 OF 2019
IN
SECOND APPEAL (ST) NO. 14434 OF 2018**

Dwarkabai Keshav Chavan and Ors. ...Applicants/Appellants

Vs.

Shivaji Digambar Khankal and Ors. ... Respondents

Mr. D. W. Bhosale for Applicants/Appellants.

CORAM : GAURI GODSE, J.

DATED : 2nd DECEMBER 2024

ORDER:

CIVIL APPLICATION NO. 188 OF 2019

1. This application is for restoration of the second appeal with a prayer to recall order dated 18th December 2018. By the said order, the second appeal was dismissed for non prosecution as none had appeared on behalf of the appellants. Since the second appeal is of the year 2018, I called upon the learned counsel for the appellants to point out whether the second appeal raises any substantial question of law.

2. I have heard learned counsel for the applicants on merits of the second appeal.

3. In view of facts and circumstances of the case, application is

allowed in terms prayer clause (b) and the second appeal is restored to file.

SECOND APPEAL (ST) NO. 14434 OF 2018

4. Heard learned counsel for the appellants. This second appeal is preferred by original defendant nos.1 and 2 to challenge the rejection of their application for condonation of delay of more than 12 years in filing the first appeal. The first appeal was preferred to challenge the trial Court's judgment and decree for partition.

5. Learned counsel for the appellants submits that the appellants were unaware about the trial Court's decree for partition and the suit was decreed ex-parte. He submits that it was only when the notice for measurement for execution of the partition decree was received, appellant no.1 learnt about the trial Court's decree. He submits that the appellants were never informed by their advocate about the progress in the suit and thus there was no negligence on the part of the appellants.

6. Learned counsel for the appellants submits that the appellants are purchasers from the father of plaintiff and the remaining defendants. He thus submits that if the first appeal is not heard on merits the appellant's substantive rights would be affected. He thus submits that the first appellate Court ought to have taken a

reasonable approach and allowed the application for condonation of delay. He thus submits that the second appeal would raise substantial question of law on the first appellate Court taking a technical view in rejecting the application for condonation of delay.

7. I have perused the papers of the second appeal.

8. The application for condonation of delay refers to the date of knowledge of the trial Court's decree. The application further refers to the appellant no.1 being an illiterate lady and thus unaware about the complicity of the legal proceedings. The reasons for not taking any steps by appellant no.2, the application states that appellant no.2 resides far away from the suit property.

9. The main reason for not challenging the trial Court's decree within time is on the ground that the appellant's Advocate never intimated them about the progress of the suit.

10. The first appellate Court has considered the application for condonation of delay and examined the reasons stated in the application. The first appellate Court refused to condone delay on the ground that the other transactions entered into by appellant no.1 and her conduct, does not indicate that she is unaware about the legal proceedings. The first appellate Court held that making allegations against the Advocate would not be a sufficient cause for

condonation of delay. A perusal of the application for delay condonation indicates that appellants have pleaded ignorance about the dispute of partition. At the same time, appellants have made allegations against their advocate that their advocate did not inform them about the status of suit. Thus, the appellants were aware of the suit and they were even represented by advocate. The application for condonation of delay is bereft of any explanation regarding any steps taken by the appellants to find out the progress of the suit. Thus, the reasons recorded by the first appellate Court to refuse condonation of delay cannot be faulted.

11. I do not find any illegal or perversity in the reasons recorded by the first appellate Court.

12. There is a huge delay of almost 13 years in filing the first appeal. Thus, for want of any satisfactory explanation for condonation of delay, the first appellate Court has rightly refused to condone the delay. The second appeal does not raise any substantial question of law. Hence, the Second Appeal is dismissed.

13. In view of dismissal of the second appeal, pending applications are disposed of as infructuous.

(GAURI GODSE, J.)