

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

Second Appeal No. 499 of 2023

Shri Dattatray Shankar Sawant v/s. Sou. Ratnabai Uttam Pawar & ors.	...	Appellant Respondents
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Mr Ramdas A Shelke, for the appellant.

CORAM : SANDEEP V. MARNE, J.

DATE : 23 February 2024

P.C. :

The challenge in the present appeal is to the order dated 29th March 2023 passed by the Principal District Judge, Sangli rejecting appellant's application for condonation of delay in filing first appeal challenging the judgment and decree dated 12th January 2017 passed by Civil Judge Senior Division, Jat in Regular Civil Suit No.191/2014.

2. The delay, condonation of which was sought in Misc Civil Application No.205/2017 by the appellant, was only 6 months and 25 days. In ordinary course, this Court would have taken a sympathetic view and considered condoning the delay, which is not inordinate. However, if the facts and circumstances of case are considered, in my view, the delay in filing first appeal by the appellant has rightly not been condoned by the first appellate Court.

3. Plaintiff is appellant's sister. Plaintiff filed Regular Civil Suit No.191/2014 against her 3 brothers (Defendant Nos.1 to 3) and 2 sisters (Defendant No.4 & 5) seeking a share in the suit property. Despite receipt of suit summons, none of the defendants thought it necessary to appear in the suit and to contest the same. It is the case of the appellant that a meeting took place in front of village panchas in which plaintiff agreed to withdraw the suit. The non-appearance of appellant/defendant No.3 in the suit is shown to be attributable to such an agreement between the parties. On account of non-appearance of the defendants, the trial Court proceeded to decree the suit by judgment and order dated 12th January 2017.

4. All 3 brothers and 2 sisters (original defendants) got aggrieved by the trial Court's decree and jointly filed Civil Ms. Application No.205/2017 seeking condonation of delay of 6 months and 25 days in filing the first appeal. During pendency of the application, however, the other two brothers and two sisters apparently changed their minds. They engaged a different Advocate, who did not remain present for prosecuting the application for condonation of delay. This shows that defendant Nos.1, 2,4 & 5 did not prosecute the application for condonation of delay before the first Appellate Court. Even before me the present appeal is filed only by original defendant No.3 who is the appellant of present case. It does appear that other family members being of two brothers and two sisters are

not aggrieved by grant of share in the suit properties to the plaintiff. It is only one of the brothers (appellant) who wish to continue the litigation against his sister. These peculiar circumstances of the case are required to be borne in mind while deciding the issue of condonation of delay.

5. Perusal of the application for condonation of delay filed originally by defendant Nos.1 to 5 would indicate that different reasons were pleaded to justify the delay for different defendants. So far as the appellant/defendant No.3 is concerned, the only cause sought to be shown was about the ill health of defendant No.3 and his admission in various hospitals. However, no evidence was produced on record to support treatment of appellant/defendant No.3 in any hospital. While appellant set up a theory of ill health and admission in hospitalization, he was simultaneously prosecuting his objection dated 14th July 2017 before Tehsildar to stall execution of partition decree. In my view, therefore, the statement made by defendant No.3 about his ill health appears to be fallacious.

6. Considering the overall prospectus of the case, though the delay is not inordinate, I am of the view that same does not deserve to be condoned considering the peculiar facts and circumstances of the case.

7. The real intention behind seeking condonation of delay is to only engage the original plaintiff and other siblings in a prolonged litigation. The impugned decree results in grant of 1/6th share to all the 6 siblings and I do not see any reason why said decree otherwise warrants an interference. Therefore, it is necessary in the interest of all the parties that entire litigation is put to rest rather than permitting appellant to reopen the same when he has not even defended the suit.

8. No patent error can be traced in the order passed by the first Appellate Court refusing to condone the delay of 6 months and 25 days.

9. No substantial question of law is involved in the appeal. The Second Appeal is rejected.

SANDEEP V. MARNE, J.

Lata Panjwani, P.S.