

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

CIVIL APPLICATION NO.3232 OF 2018

IN

FIRST APPEAL NO.1034 OF 2008

Sadhana Suresh Pandey

: Applicant

Vs.

Trustees of St. Antony Chruch & Ors.

: Respondents

Adv. Sushil Upadhyay i/by Ashok Saraogi for the Applicant.

Adv. Raphael D'souza for the Respondent Nos.1 & 2.

Mr. Santosh Parad, for the Respondent/MCGM.

CORAM : KISHORE C. SANT, J.

DATE : 5TH FEBRUARY, 2024

PC. :

1. This Application is filed for recalling and the setting aside of the order of dismissal dated 24th August, 2011 and to restore First Appeal No.1034 of 2008 to its original status by condoning delay of 6 years 169 days.

2. When the Appeal was on board on 24th August, 2011, none appeared for the Appellant. Advocate for the Respondent Nos.1 & 2 is present & none for the Appellant, this Court dismissed the Appeal for want of prosecution. It is the case of the Appellant that though it shown to the Appellant in fact it was her father in law who was pursuing the litigation.

The Appellant had only signed the papers as per instructions of father in law. The business of the dairy was also looked after by the father in law. The Applicant was only of 25 years of age and was not aware of the facts in the case and the litigation. The father in law namely Basanta Pandey expired on 30th August, 2010. Thereafter, also the parties were in the process of settlement since the parties were trying to resolve the dispute out of the Court. There was no reason to make inquiry about the First Appeal.

2. It is further stated that the officers of the Respondent in the meeting dated 3rd February, 2018 refused to settle the matter. It is thereafter the Applicant tried to contact her advocate. However the office of the Advocate also was shifted. After great difficulty she contacted the advocate, on that she came to know about the dismissal order. The Application is thereafter preferred immediately.

3. It is orally submitted that the subject matter of the Appeal is a property, if the Appeal is not restored she will loose valuable right and prays for allowing the Application.

4. Learned Advocate for the Respondent Nos. 1 & 2 vehemently opposes the Application. He has also filed Affidavit-in-Reply on behalf of the Respondent Nos. 1 & 2. He submits that the Suit of the Applicant was

rightly dismissed by the Civil Court. The Appeal filed thereafter was not prosecuted. From the documents it is seen that it is this Applicant was prosecuting matter all along. He submits that, in fact in Suit as well as in the First Appeal it is the case of the Applicant herself that she is conducting dairy business on the suit premises. She is shown as proprietor of Pandey dairy.

5. This Court has seen the averements in the Application as well as in the Affidavit-in-Reply, there is no denial of the fact that the parties were trying to settle the matter or that parties were in the process of settlement. It was quite natural for the Applicant not to pursue the First Appeal for that period. It is specific case that in a meeting dated 1st February, 2018 the Respondent refused to settle the matter and it is thereafter she made inquiry about the matter.

6. Though the learned Advocate for the Respondent relied upon the judgment in the case of *Smt. Dev Bala Sehgal Vs. Devinder Pal Sehgal*, reported in 2000 SCC OnLine P&H 1282. This Court finds that the said judgment is not applicable. In the said judgment the Appeal was restored without condoning the delay. In view of that the Court held that without condonation of delay the Application could not have been allowed for restoration.

7. In view of the above discussion this Court finds that this Application needs to be allowed, however subject to costs so as to compensate the Respondent. Hence the following Order.

ORDER

- a) The Civil Application stands allowed.
- b) Delay stands condoned.
- c) First Appeal No.1034 of 2008 be restored to its original position subject to deposit of costs of Rs.25,000/- to be paid within a period of four weeks from today.
- d) Civil Application stands disposed of.

(KISHORE C. SANT, J.)