



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

CIVIL APPLICATION 424 OF 2019
IN
SECOND APPEAL (ST.) NO. 2874 OF 2018

Vandana Shivaji Bhoite
and Another.

...Applicants.

Versus

Hirabai Bhagwat Bhoite and Others.

...Respondents.

Mr. Machhindra A.Patil, Mr. Vijay R. Garad and Mr. Jaydeep Shingare for the applicant.

Mr. Dilip D. Bodake for the respondent.

Coram : Sharmila U. Deshmukh, J.

Date : January 25, 2024.

P. C. :

1. Civil application has been preferred seeking condonation of delay of 3 years and 294 days caused in filing the second appeal. The application does not set out any reason for such a colossal delay. Therefore, in order to afford an opportunity to the applicant to explain the delay, direction was given to file an additional affidavit. Accordingly, on 1st June 2023, the additional affidavit has been filed.

2. Few facts need to be noted. Judgment and decree is dated 5th January 2012 as against which the appeal was preferred by the

applicant–original plaintiff being dissatisfied with the shares determined by the trial Court. The appeal came to be decided by the judgment dated 1st February 2014 re-determining the shares. The present application has been filed on 14th February 2018. In the background of the list of dates and events, explanation tendered in the application will have to be seen whether sufficient cause has been made out for condonation of delay. It needs to be noted that the suit was filed seeking partition and by reason of the pendency of present proceedings, the partition is stalled.

3. Now, coming to the reason given in the application for condonation of delay, it is stated that the applicant's husband expired on 14th January 2002. It is clear that the demise of the husband of applicant was prior to the passing of decree by the trial Court and as such it has no relevance as far as the explanation for delay in filing the second appeal is concerned. The suit was filed in the year 2007 much after the demise of applicant's husband. It is also pleaded that the applicant was suffering from HIV which she got infected from her husband. It is unfathomable when the husband had expired in the year 2002, till 2018 the applicant is stated to be taking medication for HIV. No medical records are produced to show that she was taking treatment till 2018.

4. The other reason which is put forward is that the applicant's son, i.e., appellant no.2, had expired on 12th January 2016. As regards the death of her son, he is stated to have expired on 12th January 2016. There is no explanation tendered as to why after the judgment of appellate Court on 1st February 2014, for a period of 2 years no efforts were taken for filing the present second appeal.

5. In paragraph 7 of the application, another reason put forward is that certified copy was applied on 13th December 2014 and due to applicant's financial condition and health problem and the death of applicant's father, there is delay. It is well settled that everyday's delay is not required to be explained. However, the explanation should be sufficient to enable the Court to exercise the discretion in favour of the applicant and to condone the delay.

6. Apart from raising various vague pleadings without any supporting documents, there is no sufficient explanation tendered seeking relief of condonation of delay of 3 years, 8 months and 7 days. Perusal of the application would indicate that there is absolutely no explanation muchless sufficient explanation as to why the present application was not filed after the certified copies were obtained on 13th December 2014. The death of the applicant's son is stated to be in the year 2016. Stating financial incapability without demonstrating

anything further cannot constitute sufficient explanation. It is also not stated as to how in the year 2018, funds were received by the applicant so as to enable her to file the present second appeal.

7. Considering the above, this is not the case in which liberal approach is required to be adopted considering that the suit is for partition and other parties are waiting for partition of their shares. Even otherwise, it is not the case of the applicant that she has been deprived of any share in the ancestral property.

8. Having regard to the discussion above, there is no explanation tendered which would impress this Court to condone the delay of 3 years, 8 months and 7 days. In that view of the matter, application stands dismissed.

[Sharmila U. Deshmukh, J.]