

18 January 2024.

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
INTERIM APPLICATION NO. 20400 OF 2022
IN
SECOND APPEAL (ST.) NO. 12263 OF 2022

Shri. Shivaji Bhau Kokate & 1 Anr.

....Applicants

IN THE MATTER BETWEEN :

Shri. Shivaji Bhau Kokate &
1 Anr.

...Appellants

(Orig. Defendants)

V/s.

Kum. Sudhir Anant Bhojane and 2 Ors.

...Respondents

Mr. Akash K. Kotecha i/by. Meraki Legal, for the
Appellants/Applicants.

None for the Respondent.

CORAM : SANDEEP V. MARNE, J.

DATED : 18 JANUARY 2024.

P.C. :

1. The application is filed seeking condonation of delay of seven years and 136 days in filing the Second Appeal. In the Second Appeal, the Judgment and Decree passed by the District Judge, Mangaon on 30 September 2014 in Regular Civil Appeal No. 31 of 2012 is challenged.

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2. In the application for condonation of delay, Applicants have pleaded following reasons for inordinate delay of 7 years and 136 days.

a. I am aware of the court procedures. However, I was aware that my rights need to be protected.

b. That in relation to ongoing disputes between me and the original Plaintiff, I was given a legal opinion to file an RCS against the original plaintiff numbered RCS 119/2013 before the Civil Judge Junior Division, At Mangaon and accordingly trusted the legal opinion. It was stated to me that issues here would be different from issues in the earlier litigation.

c. That after the Ld. Civil Judge Junior Division, at Mangaon was pleased to disallow the RCS 119/2013, I was suggested to go in Appeal vide Regular Civil Appeal 25/2018 as per the legal opinion and proceeded accordingly.

d. That the Ld. 1st Appellant Court was pleased to dismiss the said Appeal.

e. That all through out, I was of the opinion that my interests have been safeguarded by the Counsel.

f. That after the 1st Appeal was also dismissed, I sought a number of legal opinions thereafter and hence have come before this Hon'ble Court as soon as I could.

g. That this is also to state that I am aged 71 and being a senior citizen, this Hon'ble Court may consider condoning the delay.

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h. That the delay is not due to lack of vigilance on my part and the delay is not on my accord.

3. I have heard Mr. Kotecha, the learned counsel appearing for the Appellants/Applicants. He would submit that the main reason for delay is the erroneous advice given to the Applicants to institute Regular Civil Suit No. 119 of 2013 instead of challenging the decision of the District Court by filing Second Appeal. He would submit that in accordance with the erroneous advice given to the Applicants, they filed Regular Civil Suit No.119 of 2013 for declaration of ownership and other consequential benefits in respect of the suit properties. That the said suit was dismissed on the ground of *res-judicata* on 12 January 2018. That the Applicants were thereafter advised to file Regular Civil Appeal before the District Court challenging the Decree dated 12 January 2018. Accordingly, the Applicants filed Regular Civil Appeal No.25 of 2018 before the District Court which came to be dismissed on 19 March 2022. According to Mr. Kotecha, immediately after dismissal of Regular Civil Appeal No. 25 of 2018, they have filed the present Appeal. He would submit that the delay is caused essentially on account of erroneous advice given to the Applicants to file a fresh suit rather than challenging the Decree of the Trial Court dated 7 March 2012 in Regular Civil Suit No. 62 of 2008 and of the first Appellate Court dated 30 September 2014 in Regular Civil Appeal No. 31 of 2012 by filing the Second Appeal.

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4. I have considered the submissions canvassed by Mr. Kotecha. Regular Civil Suit No. 62 of 2008 was filed by the Plaintiffs therein seeking injunction against the Applicants from disturbing Plaintiff's possession of the suit property. The suit was decreed on 7 March 2012. The principal defence of the Applicants in Regular Civil Suit No. 62 of 2008 was that the possession by Plaintiffs was premised on the basis of the Agreement dated 16 January 1974 shown to have been executed in the name of Damu Govind Bhojane who had actually expired on 6 February 1973. The Trial Court after appreciating the evidence came to the conclusion that the said Damu Govind Bhojane was alive on the date of execution of Agreement dated 16 January 1974. Be that as it may, this is an issue on merits. Applicants unsuccessfully challenged the Decree in Regular Civil Suit No. 62 of 2008 by filing Regular Civil Appeal No. 31 of 2012. The said Appeal remained pending before the first Appellate Court till 30 September 2014. Before decision of that Appeal, Applicants filed fresh suit bearing Regular Civil Suit No. 119 of 2013 on 8 July 2013. Thus, the contention that is sought to be raised before this Court that Applicants were given erroneous advice of filing fresh suit instead of filing Second Appeal is factually incorrect. As a matter of fact, Regular Civil Suit No. 119 of 2013 was filed before the decision of the Regular Civil Appeal No. 31 of 2012. Thus, the very ground pleaded for condonation of delay is factually incorrect. It clearly appears that Applicants prosecuted Regular

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Civil Appeal No. 31 of 2012 and sought decision on merits notwithstanding pendency of Regular Civil Suit No. 119 of 2013 which was instituted on 8 July 2013.

5. After dismissal of Regular Civil Appeal No. 31 of 2012 on 30 September 2014, the Applicants ought to have filed the Second Appeal within the time limit. The justification of old age of Applicant No.1-Shri. Shivaji Bhau Kokate cannot be accepted in that said Shri. Shivaji Bhau Kokate was very much vigilant about his rights and was in a position to institute Regular Civil Suit No. 119 of 2013 on 8 July 2013 and thereafter filed Regular Civil Appeal No. 25 of 2018. Thus, it has come on record that said Shri. Shivaji Bhau Kokate was engaged in various litigations after dismissal of Regular Civil Appeal No. 31 of 2012.

6. About the age of Shri. Shivaji Bhau Kokate, also there appears to be inconsistency. In Regular Civil Suit No. 119 of 2013 filed on 8 July 2013, the said complaint discloses his age as 54 years. Considering the age declared in the said suit, Shivaji Bhau Kokate would be 63 years old as on the date of affirming the Interim Application on 8 May 2022. However, he falsely declared his age as 71 years in the application.

7. Considering the conduct of the Applicants, I am not inclined to condone the delay of 7 years and 136 days in filing the present Appeal. Infact considering the false averments made in

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the Application, costs are required to be imposed on the Applicants. Interim Application is accordingly **disposed of**.

8. Since the Interim Application for condonation of delay is dismissed, Second Appeal also stands dismissed.

NEETA
SHAILESH
SAWANT

SANDEEP V. MARNE, J.

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