IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO. 864 OF 2022
WITH
IA/30691/2022 IN SA/864/2022

Sudam Dagadu Wagh And Ors. ...Appellants
Versus
Somnath Bhaskar Ratnakar And Ors. ...Respondents

. . ..

Mr. Mahesh Subramaniam, i/b. Mr. Sachin Dhakephalkar, for Appellants.

. . ..

CORAM : SANDEEP V. MARNE, J.

DATED : 08 MARCH 2024.

P. C. :

By this Appeal, Appellants challenge Order dated 26 March 2021 passed by the District Judge-7, Nashik rejecting Civil Miscellaneous Application No.162 of 2012 filed for condonation of delay in preferring the Appeal challenging the Decree dated 15 November 2003 passed by Civil Judge, Junior Division, Sinner in Regular Civil Suit No.193 of 1976.

2. I have heard Mr. Subramaniam, the learned counsel appearing for Appellants. He would submit that Appellants are bonafide purchases of the property in question as they were not aware about decree of suit by the Trial Court. That they approached the First Appellate Court immediately after acquisition of knowledge about the decree dated 15 November 2003. He would submit that delay was

properly explained as the knowledge about the decree was acquired by the Appellants in the year 2012 and immediately thereafter Civil Miscellaneous Application was preferred seeking condonation of delay.

3. I find the entire transaction that took place between the Appellants and the original Defendants in the Suit to be an outcome of fraud. The Trial Court decreed RCS No.193 of 1976 filed by Plaintiffs after 27 long years on 15 November 2003. One of the Original Plaintiffs filed execution petition No.03 of 2004 in which Court Commissioner was appointed for execution of re-conveyance of the suit property on 09 September 2011.

4. It appears that taking disadvantage of delay in execution of the decree, original Defendants executed the irrevocable power of attorney in respect of suit property in favour of Jawant Dashrath Avhad (Appellant No.3). In the power of attorney there is a specific reference to the litigation that took place in respect of suit property. Thus, Appellant No.3 acquired knowledge about the litigation that took place between the Plaintiffs and Defendants in RCS No.193 of 1976. In fraudulent manner, Appellant No.3 executed a sale-deed in respect of suit property in his own name on the strength of the power of attorney. Appellant No.1 Sudhir Dagdu Wagh was one of the attesting witness to the said sale-deed, to which the power of attorney was attached. Thus, Appellant No.1 also acquired knowledge about litigation that took place between the original Plaintiffs and Defendants. The fraud did not end here. Appellant No.1 thereafter purchased part of the suit property from Appellant No.3 on 04 November 2008. Appellant No.2 also purchased the remaining suit property from Appellant No.3 by a separate registered sale deed executed on 04 November 2008.

5. This is how the Appellants conspired with the original Defendants to defeat the decree passed in favour of the original Plaintiff. The purchase transactions dated 04 November 2008, executed with full knowledge about the decree dated 15 November 2003 are sought to be termed as bonafide purchase by Appellants. I refuse to believe that the said purchase transactions are bonafide in any manner. The same in fact appears to be fraudulent. After purchase transaction with full knowledge of decree passed in RCS No.193 of 1976, the Appellants desired to set up challenge to the decree by filing Miscellaneous Civil Application for condonation of inordinate delay in filing the Appeal. The Appeal was sought to be filed with the sole intention of engaging original Plaintiffs in endless litigation. By now, period of 48 years has elapsed since the suit was filed.

6. The First Appellate Court has rightly taken into consideration the above aspects while declining the discretionary relief of condonation of delay. Permitting Appellants to prosecute their Appeal before the First Appellate Court would tantamount to aiding them in these fraudulent transactions. Appellants have interfered with the course of justice by attempting the frustrate the decree passed in favour of original Plaintiffs which was the result of prolonged litigation which ensued for 27 long years. Therefore while dismissing the Application for condonation of delay, I am of the view that Appellants are required to be saddled with exemplary costs. No question of law, much less any substantial question of law, is involved in the Appeal. The Second Appeal is accordingly dismissed by imposing costs of Rs.25,000/- on the Appellants. The Costs shall be deposited by the Appellants with the High Court Legal Services Authority within a

period of 02 months from today. Since the Appeal is disposed of, nothing survives in the Interim Application and it is also disposed of.

SANDEEP V. MARNE, J.

KISHOR VISHNU KAMBLE Digitally signed by KISHOR VISHNU KAMBLE Date: 2024.03.12 17:04:50 +0530