



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD
SECOND APPEAL NO.482 OF 2023
WITH
CIVIL APPLICATION NO.191 OF 2024**

Smt. Venubai Pralhad Koli,
Age: 66 Tyears, Occ. Agriculture,
R/o. C/o. Pralhad Sakharam Koli (Bholankar),
At Post Shirsoli, Tq. Nandura, Dist. Buldhana ..Appellant
(Original Defendant)

Versus

Bhaskar Pandit Koli,
Age: 48 Years, Occ. Business,
R/o. Ranjani, Tq. Jamner, Dist. Jalgaon ..Respondent
(Original Plaintiff)

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Mr. H. P. Randhir, Advocate for Appellant.
Mr. G. V. Wani, Advocate for Respondent.

...
**CORAM : S. G. CHAPALGAONKAR, J.
DATED : 04th FEBRUARY, 2025.**

ORDER:-

1. The present Appeal takes exception to the order dated 02.01.2023 passed by Ad-hoc District Judge-2, Jalgaon below Exhibit-1 in Civil M.A. No.151/2021, thereby rejecting prayer to condone the delay caused in filing Appeal against judgment and decree dated 09.04.2019 passed by Civil Judge Junior Division, Jamner, Dist. Jalgaon in Regular Civil Suit No.87/2015. (Hereinafter, parties are referred to by their original status for the sake of convenience and brevity).

2. In brief facts leading to this Appeal can be summarized as under:

The respondent/plaintiff instituted Regular Civil Suit No.87/2015 before Civil Judge Junior Division at Jamner seeking relief of specific performance of contract in respect of land Gut No.410/1 admeasuring 2H, so also claimed relief of permanent injunction against defendant. According to plaintiff, on 30.04.2013 defendant executed registered agreement to sale and agreed to transfer suit property to the plaintiff for total consideration of Rs.2,80,000/-. The defendant received Rs.2,36,000/- in cash and balance amount of Rs.44,000/- was agreed to be paid at the time of execution of sale deed. However, defendant failed to execute sale deed and complete the transaction and started obstruction over the possession of the plaintiff. Hence, he filed suit.

3. The defendant resisted the claim contending that her husband was suffering from ailment, her son is handicap. She was in dire need of money. She requested for hand loan of Rs.1,65,000/- to the plaintiff. In lieu of hand loan, defendant executed agreement to sale by way of security of loan. The defendant contends that she continued in possession of the property and repaid the amount of Rs.1,30,000/- to the plaintiff. However, present suit is filed with intention to grab the property. The Trial Court framed the issue, recorded evidence of the parties and finally decreed the suit of the plaintiff vide judgment and order dated 09.04.2019.

4. The defendant filed Appeal alongwith Civil M.A. No.151/2021 to condone the delay. The same has been rejected by the District Judge. Hence, present Second Appeal.

5. Mr. Randhir, learned Advocate appearing for the appellant submits that delay of about 2 years and 17 days has been caused in filing the Appeal, however, same has been properly explained. The decision in the suit was rendered on 20.04.2019. However, on 04.04.2019, she had suffered fracture and doctor had advised her for rest. Her husband was suffering from serious ailments. Resultantly, applicant could not contact her Advocate. Thereafter, pandemic situation subsisted and finally she could file Appeal alongwith application for condonation of delay on 21.06.2021. Mr. Randhir submits that delay caused in filing Appeal in unintentional. The applicant is old age lady, suffering from various illness. Only source of income available to her is agricultural land, which is subject matter of dispute. According to him, substantive right of defendant is involved. The Trial Court adopted hyper technical approach while passing impugned order and foreclosed her right.

6. Per contra, Mr. Wani, learned Advocate appearing for the respondent submits that limitation for filing Appeal expired on 03.06.2019. The pandemic situation subsisted from March-2020. The applicant could not tender any explanation for the period from

03.06.2019 till March-2020. Only because defendant is old age lady, she cannot claim sympathy in absence of sufficient reason that precluded her from filing Appeal within stipulated period of limitation. Mr. Wani would, therefore, justify the impugned order and urges to not to interfere the same.

7. In light of submissions advanced by learned Advocate appearing for the respective parties, following substantial questions of law arises for consideration in this Appeal:

(A) Whether Appellate Court is justified in declining to condone the delay in light of reasons stipulated in application alongwith supporting material tendered by the appellant?

(B) Whether Appellate Court failed to judiciously interpret term “sufficient cause” and hyper technically applied in facts of the present case?

8. Looking to the limited controversy, learned Advocate appearing for the respective parties advanced their submissions on aforesaid substantial questions of law and requested to decide Appeal at the admission stage. In light of the joint request, present Appeal is taken up for decision at the admission stage only.

9. In the matter of delay condonation reference to principal of law espoused by Hon’ble Supreme Court of India in case of

Collector, Land Acquisition, Anantnag & Anr. Vs. Katiji & Ors.¹ is indispensable. The Supreme Court observed that legislature confirmed the power to condone the delay by enacting Section 5 of the Indian Limitation Act, 1963 in order to enable the Courts to do substantial justice to the parties by disposing of the matters on merits. The expression “sufficient cause” employed by legislature is adequately elastic to enable Courts to apply the law in a meaningful manner which sub-serve the ends of the justice. It is further observed that ordinarily litigant does not stand to benefit by lodging an appeal late hence refusing to condone the delay can result in a meritorious matter being thrown out at the very threshold and cause of justice being defeated, when substantial justice and technical considerations are fitted against each other, the cause of substantial justice deserves to be preferred.

10. Keeping in mind aforesaid exposition of law, some important facts of the present case need reference. The dispute pertains to the agricultural land that has been owned by defendant. Admittedly, she is old age lady more than 64 years of age. She deposed before the Court and placed on record documents in support of her contention that she had suffered fracture on 04.04.2019. The history of pain in left ankle due to fall has been recorded in discharge summary. The plaster was applied and she was discharged with instructions to not to walk initially, but she

¹ (1987) 2 SCC 107.

was advised rest for 45 days. The defendant deposed before the Court that her husband was also hospitalized, but she could not support the statement by producing document in evidence. Admittedly, period of limitation from 15.03.2020 till 28.02.2022 was freezed by order of the Supreme Court of India in ***Suo Motu Writ Petition (C) No.03/2020***. Therefore, defendant will have to explain delay from 03.06.2019 to 15.03.2020 only. The learned District Judge observed that appellant cannot seek sympathy of Covid-19 situation for enlargement of limitation.

11. Aforesaid facts indicate that defendant has suffered fracture just 15 days prior to the decision in the suit. Her age is more relevant. It is true that doctor had advised her rest for 45 days, however, that does not mean that she was absolutely fit for resuming normal activities. One cannot oblivious that old age person suffering from fracture requires care for months together. Further, age of appellant was 65 years, her husband must be aged about 70 years. Her statement regarding illness of husband is not supported by documentary evidence, however, every illness need not be documented.

12. The agreement to sale, which is subject matter of dispute was said to be entered to meet out medical expenses of the husband. The defendant has no other source than agricultural land, which is subject matter of dispute. If aforesaid circumstances are

considered together, one can definitely conclude that delay is unintentional. Atleast, defendant could not have drawn any benefit by making delay in filing Appeal. No malafides are attributed against defendant or can be gathered from her conduct. *Prima facie*, it appears that, plaintiff is in possession of land. If that is so, the plaintiff would have no inconvenience or hardship if the delay is condoned and the appeal is heard on merit. This Court is of the opinion that Appellate Court could have adopted liberal approach considering the nature of dispute and factual aspects surfaced on the basis of evidence tendered into service. In result, first substantial questions of law are answered in negative and second in affirmative. Consequently, Second Appeal deserves to be allowed. Hence, following order:

ORDER

- (i) Second Appeal is allowed.
- (ii) The judgment and order dated 02.01.2023 passed below Exhibit-1 in Civil M.A. No.151/2021 by Ad-hoc District Judge-2, Jalgaon, is hereby quashed set aside.
- (iii) Civil M.A. No.151/2021 is allowed. The delay of 2 years and 17 days caused in filing the appeal is hereby condoned, subject to condition that appellant pays cost of Rs.5000/- to respondent within four weeks from date fixed for appearance of parties before District Court.

(iv) Civil Appeal be registered and taken up for hearing in accordance with law.

(v) The parties shall appear before the District Court on 24th March, 2025.

13. In view of the above, nothing survives in the Civil Application and the same is accordingly disposed of.

(S. G. CHAPALGAONKAR)
JUDGE

Devendra/February-2025