



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

SECOND APPEAL NO. 393 OF 2022

WITH

CIVIL APPLICATION NO. 9228 OF 2022 IN SA/393/2022

Sangita Subhash Gadade

Age : 45 years, Occu. Household,

R/o. Mahatpuri, Taluka – Gangakhed,

District – Parbhani

...APPELLANT

VERSUS

Ramesh Bhagurao Gadade

Age : 55 years, Occu. Agriculture & Advocate

R/o. Pangara Gadade,

Taluka – Mantha, District – Jalna.

and

R/o. Mahatpuri, Taluka – Gangakhed,

District – Parbhani

...RESPONDENT

Adv. Subodh P. Shah, Advocate for Appellant

Adv. A. R. Puri and Adv. T. S. Lodhe, Advocate for Respondent Sole

CORUM : ROHIT W. JOSHI, J.

DATE : 21st MARCH, 2025

JUDGMENT:

1. The appellant in the present appeal has suffered a decree for partition and separate possession in R.C.S. No. 18 of 2011. The respondent-plaintiff is real brother of deceased husband of the defendant who is the appellant in the present Second Appeal. Admittedly, the suit summons were served upon the defendant and she had entered

appearance in the matter, however, the suit was not contested and ultimately the suit came to be decreed vide judgment and decree dated 06.02.2012 passed by the learned Civil Judge Junior Division, Mantha, District Jalna.

2. The defendant has thereafter filed an appeal under Section 96 of the Code of Civil Procedure, however since there is a delay, an application for condonation of delay was filed under Section 5 of the Limitation Act, 1963, which was registered as Civil Miscellaneous Application No. 16 of 2021. It is stated in the application that after the defendant had entered appearance in the civil suit, the plaintiff had initiated talks for settlement and therefore, she did not file written statement in the matter. It is further stated that defendant trusted the plaintiff since he was her brother-in-law.

3. The defendant has thereafter stated that taking advantage of the situation that the defendant did not file her written statement and was not contesting the suit, the plaintiff obtained a decree for partition and separate possession in the said suit. She then states in paragraph 5 of the application that she was no aware about adjudication of the said suit and an adverse decree being passed in the said suit against her. She states that she came to know about the decree passed against her on receiving

notice in the execution proceedings. However, the date on which the notice was served is not mentioned.

4. It is stated in paragraph 5 of the application that after receiving notice in the execution proceedings she had contacted the plaintiff stating that in terms of the compromise talks the plaintiff should not prosecute the matter any further and should permit the defendant to sell the suit property. The defendant states that plaintiff had agreed for this and therefore, she sold the suit property to a third person vide sale deed dated 28.06.2018.

5. Although the date on which the notice in execution proceedings is served is not mentioned, it is apparent that the notice was received prior to 28.06.2018 i.e. the date on which the suit property sold by the defendant to third person. In such circumstances, it needs to be noted that the application for condonation of delay and the appeal came to be filed on 12.02.2021. Perusal of the application does not disclose any plausible explanation for not contesting suit.

6. It is beyond comprehension that after initiation of compromise talks as alleged the defendant did not take any steps in the matter to contest the suit only on the ground that the compromise talks were allegedly initiated. The pleadings in the application indicate complete

inaction on the part of the defendant for a period of around six to seven years i.e. from somewhere around 2011-12 up to 2018.

7. It is pertinent to note that the notice in execution proceedings was admittedly served on the defendant in the year 2018, even thereafter, she did not act with promptitude in taking steps for filing appeal. Appeal is filed along with application for condonation of delay on 12.02.2021 i.e. after delay of about two and a half to three years from the date on which notice for execution proceedings came to be served on defendants.

8. The explanation for not contesting the suit that the plaintiff is brother-in-law of the defendant and therefore, she trusted him also does not appeal to reason. It also appears that the brother-in-law had obtained decree about which the plaintiff became aware in the year 2018, yet she claims that she trusted her brother-in-law and did not file appeal immediately in the year 2018.

9. Apart from this, the other contents of the application pertain to merits of the decree for partition passed by the learned Trial Court which cannot be looked into while dealing with an application for condonation of delay. The learned First Appellate Court has rightly observed that there is an inordinate delay of around nine years in filing appeal for which there is no plausible explanation. Rather the contents of the

application even if accepted to be true and correct only show complete lethargy and disinclination in contesting the matter on the part of the defendant.

10. In my considered opinion, having regard to the contents of the application and assuming them to be completely true and correct learned First Appellate Court has not committed any error in rejecting the application for condonation of delay.

11. The learned counsel for the appellant has placed reliance on judgment of the Hon'ble Supreme Court in the matter of *M. K. Prasad Vs. P. Arumogam* reported in *(2001) 6 SCC 176* . In the said matter there was a delay of about 554 days in filing First Appeal. The appellant had explained the delay by stating that the person who was appearing in the matter on behalf of the company had left service in the year 1994 because of death of his son and thereafter nobody had informed him about further proceedings in the Court. In that view of the matter, the Hon'ble Supreme Court has observed in paragraph 10 of the judgment that although the appellant was not as vigilant as he ought to be yet his conduct was not such as to castigate him as an irresponsible litigant.

12. The facts of the present case are clearly distinguishable. The defendant herself had entered appearance in the suit through an

advocate. However thereafter she did not care to file written statement in the suit or appear in the suit for contesting the same.

13. There is a complete silence on the part of defendant for a period of around six to seven years. Astonishingly, even after receiving notice in the execution proceeding which clearly indicates that her a brother-in-law did not keep his word, about compromise, the defendant has not filed appeal for a period of around two and a half years. She had rather sold the suit property knowing fully well that she had suffered an adverse decree. The judgment of the Hon'ble Supreme Court therefore, cannot be of any assistance to the appellant in the present case. In that view of the matter no substantial question of law arises for consideration in the appeal.

14. The appeal is therefore, **dismissed** with no order as to costs.

15. Pending civil applications, if any, stand disposed of.

[ROHIT W. JOSHI]
JUDGE

Komal_Kamble/