



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CIVIL APPLICATION NO. 14445 OF 2023
WITH
CIVIL APPLICATION NO. 14446 OF 2023
IN
SECOND APPEAL (ST) NO.34655 OF 2023

- 1] Jayshri Ishwarlal Gandhi
Age: 64 years, Occ.: Household
R/o. Shivdarshan Apartment, Burud Galli,
Ahmednagar, Tq. & Dist. Ahmednagar.

Through her Power of Attorney
Prashant S/o. Ishwar Gandhi,
Age: 38 years, Occ.: Agri.,
R/o. Shivdarshan Apartment, Burud Galli, Ahmednagar,
Tq. & Dist. Ahmednagar.
..APPLICANT
(Orig.Plaintiff No.4)

VERSUS

- 1] 1. Ashok Ramchandra Chopda,
Since deceased, through legal heirs
- 1-A Kamlesh S/o. Ashok Chopda,
Age: 41 years, Occ.: Trading and Agri..
- 1-B Ketan S/o. Ashok Chopda
Age: 40 years, Occ.: Trading and Agri..
Res. No. 1-A and 1-B R/o. Kamlesh Super Market,
Near S.T. Stand, Jamkhed, Dist. Ahmednagar.

- 1-C Kavita Ashok Chopda @ Kavita Anand Gandhi
Age: 38 years, Occ. Household,
R/o, Vastu Nagar Society, Market Yard,
Bibwewadi, Kondhava Road, Pune-37
2. Rajashri Ashok Chopda,
Age: 55 years, Occ.: Household.
R/o. Kamlesh Super Market,
Near S.T. Stand,
Jamkhed, Dist. Ahmednagar.
3. Abhay Ramchandra Chopda,
Age: 48 years, Occ.: Trading and Agri.,
R/o. Kamlesh Provision Stoers/Grocery Shop,
Nagar Road, Jamkhed, Dist. Ahmednagar.
4. Gulabbai Mithulal Gugale,
Age: 70 years, Occ.: Household,
R/o. Shivaji Road, Kopargaon,
Tq. Kopargaon, Dist. Ahmednagar.
5. Echrajbai Shobhachand Munto
Since deceased, through legal heir
- 5-A Anil Shobhachand Munot,
Age: 55 years, Occ.: Business,
R/o. Behind Santosh Mangal Karyalaya,
Post Thergaon, Tq. Haveli, Dist. Pune.
6. Vijayabai Rajmal Gundecha,
Age: 60 years, occ. Household,
R/o. Pushkraj Apartment,
Naupatgir Chowk, Somwar Peth,
Pune

7. Vidya Anil Katariya
Age: 45 years, Occ.: Household,
R/o.Chandra Niwas,
C/o. Sandesh Provision Store, Takli Road,
At Post Kopargaon, Tq. Kopargaon,
Dist. Ahmednagar.

...RESPONDENTS

Advocate for Applicant : Mr. Amol K.Gawali
Advocate for Respondent Nos. 1/A,1/B, 2 and 3 : Mr. Sumeet N.Bora

CORAM : SHAILESH P. BRAHME, J.

RESERVED ON : 15th JULY 2025

PRONOUNCED ON : 21st JULY 2025

FINAL ORDER :

1. Heard both sides.
2. Applicants are seeking condonation of delay of 2092 days in preferring Second Appeal. Second Appeal is arising out of dismissal of the suit for partition preferred by present Applicant and Respondent Nos. 5 to 7 which is reversed by Lower Appellate Court in Regular Civil Appeal No.286/2012 vide judgment dated 03.11.2017. Second Appeal alongwith application for condonation of delay has been filed on 09.10.2023.
3. On the basis of averments in application, learned Counsel Mr. Amol Gavali submits that Applicant/Plaintiff No.4 was not in touch with

advocate looking after the matter in Lower Appellate Court. Applicant suffered a paralytic attack and was bedridden and she could not keep track with the decision of RCA No.286/2012. It is further contended that she was under prolonged treatment and in support of that, medical certificate was placed on record. It is further submitted that when her son inquired, the judgment and decree dated 03.11.2017 came to their knowledge. It is her further case that she is infact entitled to 1/7 share, but only 1/21 share is allotted to her.

4. The Respondents filed reply to the application and annexed certain documents. By way of rejoinder, further grounds are disclosed. Mr. Gavali has made submissions and referred documents that the hospital, wherein the Applicant was being treated, was unable to supply papers of treatment because of its declaration in the news-paper dated 18.09.2023. Few copies of the papers issued by the hospital are placed on record. It is reiterated that she was under constant medical treatment till 2023 and she was suggested a knee surgery. It is further submitted that the decision of the Lower Appellate Court was brought to her notice. She was in financial difficulties. Therefore she executed agreement to sell her undivided share on 04.11.2020. Her son Prashant who is looking after her suffered accident in 2021 and was hospitalized. Because of the expenses on the medical treatment, she was required to sell out her undivided share by sale deed dated 20.04.2023.

5. It is submitted that when she learnt that her sister Respondent – Ishrajbai alienated 1/7 share to Respondent Nos. 2 and 3, advice of lawyer was solicited. She was given hope that she would get 1/7 share if the appeal is filed. She is legally entitled to get 1/7 share and injustice is caused by awarding 1/21 share. Mr. Gavali submits that length of delay is not relevant. There is cogent explanation supported by documents and liberal approach needs to be taken to do substantial justice.

6. Respondents contested application for condonation of delay by filing reply. On the basis of reply and material on record learned counsel Mr. Bora has canvassed that an inordinate delay of 2092 days has been caused and there is no sufficient explanation. Applicant has suppressed material facts and she is misleading the Court. It is submitted that she has shown deliberately inconsistent and vague reasons which are not supported by any material. The, medical certificate filed on record by the applicant and the medical papers of her ailment or the ailment of her son are irrelevant and incompatible. It is vehemently submitted that the time of knowledge of judgment and decree is falsely stated. She had knowledge of the judgment which was acted upon and revenue record was also created. The agreement to sell executed by applicant on 04.11.2020, 03.02.2022 and sale deed dated 20.04.2023 do not corroborate her explanation.

7. It is submitted that there is no reliable record to show that she was really suffering from paralysis and unable to approach this Court. The reason put forth regarding accident of her son and his disability also holds no merit. It is submitted that self contradictory statements on oath are made in the rejoinder. It is further submitted that applicant is dishonest and with malafide intentions she has approached this Court. She learnt that respondents are developing the properties and with greed of money she has approached this Court. Lastly, it is submitted that belatedly soliciting lawyers advice itself is misconceived.

8. I have considered rival submissions of the parties. Applicant is seeking condonation of delay of 2092 days in filing second appeal against judgment and decree dated 03.11.2017 passed by Lower Appellate Court. Second appeal along with present application is filed on 09.10.2023. It transpires from record that applicant is staying with her son Prashant and he participated in every transaction of the immovable property occurred after judgment of Lower Appellate Court. Not only that, he acted as her attorney. Even if it is presumed that for the reason of severe illness, applicant was indisposed of in taking steps to approach High Court, it is incomprehensible as to why her son did not help her or did not take any steps in the interest of his mother for filing second appeal within reasonable time. It is not her case that she is

staying separate from her son or there is rift between them. Rather, a precious plea has also been taken that for the medical expenses of her son due to his accident she is required to sell out her undivided share. Application for condonation of delay as well as rejoinder are silent on this aspect which creates doubt for her bonafides.

9. It is very surprising that application for condonation of delay does not spell out accident of her son as well as the transactions enter with various persons for selling her undivided share. The reasons which are tried to be supplied by her by way of rejoinder are within her special knowledge and could have been disclosed in the application itself. There is every room of infer that when the respondents filed reply and exposed her for suppression of material facts and falsehood of her explanation, to over come the same, rejoinder is filed with additional reasons and documents. This reflects on her conduct.

10. The application for condonation of delay does not refer a specific time as to when she got knowledge of impugned judgment and decree dated 03.11.2017. The tenor of paragraph Nos.4, 8 and 9 of application is that she was not aware of impugned judgment or she had no occasion to know the impugned judgment. Learned counsel for the respondents has adverted my attention to rejoinder and specifically paragraph No.5 which is as follows :

“In view of the fact that, the present applicant was paralyzed and was suffering from financial difficulty, the respondent No.1-A, 1-B and respondent No.2 who were her only close relatives had approached the present applicant. They had brought to her notice that, she has been allotted 1/21st share in the suit property as had been held by the judgment and decree dated 03.11.2017 passed in Regular Civil Appeal No. 286/2012.

It was suggested by them that, in order to get over the financial difficulties she could sale her undivided 1/21st share and based on their directions the agreement to sale dated 04.11.2020 was executed. Which is annexed at Exhibit R-3 to the reply (Page No. 67 to 69).”

11. She had knowledge of judgment dated 03.11.2017 prior to execution of unregistered agreement to sell which was executed on 04.11.2020. Her own statement on oath is inconsistent with her averments in paragraph Nos.4, 8, 9 of application. Interestingly, further inconsistency is also exposed by following paragraph of the same rejoinder.

“8. The applicant states and submits that, the applicant as stated in paragraph No.4, 8 and 9 maintains that, the applicant was unaware about the judgment and decree dated 03.11.2017 and had executed the agreement to sale and registered sale deed under financial durress as per the say of the respondents herein.”

. I am of the considered view that applicant is misleading the Court and she has made false statements on oath that she was not aware of the impugned judgment.

12. My attention is adverted by learned counsel Mr. Bora to the revenue record produced along with reply. The mutation entry No.20654

and 7/12 extract clearly indicate that the parties to the litigation were allotted shares in suit land Gut No.647, 646, 642. A mutation entry No.20654 effected on or about 17.02.2020 shows partition by metes and bounds. The applicant was also allotted her share as per the decree passed by Lower Appellate Court. The claim of the applicant that she was not aware of impugned judgment appears to be false. Mr. Bora, learned counsel has rightly referred to unregistered agreement dated 04.11.2020 which recites in paragraph No.2 that proposed purchaser was apprised of all the entries of the property. Applicant's son Prashant is the witness for the document. Only inference that can be drawn is that applicant and her son were very well aware of impugned judgment which is tried to be suppressed by them to extend the limitation.

13. It is mentioned in the rejoinder by the applicant in paragraph No.5 that due to financial difficulties she was required to sell out her undivided 1/21st share. It is further stated in paragraph Nos.7 and 8 that she alienated her undivided share by registered sale deed due to financial duress. Agreements produced on record dated 04.11.2020, registered agreement dated 03.02.2022 and sale deed dated 20.04.2023 do not spell out any reason for alienation of undivided share. I have already observed that her original application for condonation of delay is also silent on this aspect. Averments in the rejoinder are articulated to gain sympathy of this Court.

14. Applicant has put forth a reason for her continuous medical treatment or ailment. A medical certificate dated 18.09.2023 is also relied on. The ailment shown in the certificate is not compatible with her ailment of paralysis. A paralysis can be said to be a serious ailment. No supportive material is placed on record. It has not been pleaded that she was taking treatment in Anandrushiji Hospital and Heart Surgery Center. A public notice in the newspaper is of 19.01.2023 and 28.01.2023 which is referred to as an excuse for not producing the medical paper can be no avail. But, there is every reason to infer that it is after thought. The stray bills of medical expenses would not further her case. Some pathological reports are also placed on record along with prescriptions of the medicines which cannot be relied on. No discharge card or summary of the patient is placed on record which would have corroborated her explanation of prolonged illness.

15. An attempt is made by the applicant to show that her son also suffered accident in the year 2021 and he was operated. There is no documents on record to support this theory. I have already recorded that before accident, son was healthy, associated with the applicant and could have solicited due legal advice. The slumber from 2020 till filing of the second appeal is doubtful and unacceptable.

16. Upshot of above discussion is that the applicant was aware of

the decision of the lower appellate court. Her theory that belatedly she received legal advice for preferring appeal so as to get enhancement in her share is not well-founded. In the affidavit in reply, it is mentioned that no sooner than the respondents started developing property which they acquired legally from other members of the family, she started making unlawful demands appears to be probable. Applicant has suppressed material facts. Her versions for condonation of delay are inconsistent. Considering her overall conduct, it can not be ruled out that when the respondents did not budge to her demands she has preferred the appeal. Her dishonesty and greediness is apparent on record.

17. Respondents placed reliance on following judgments of the Supreme Court :

a) Judgment of the Supreme Court in the matter of **Dalip Singh vs. State of U.P and Ors.** reported in (2010) 2 SCC 114.

. My attention is adverted to paragraph No.9 to buttress that same principles are applicable to the applicants for filing second appeal, belatedly which are applicable for invoking jurisdiction under Article 32 of the Constitution of India.. It is trite law that suppression of material facts disentitles a person from claiming equitable and discretionary relief.

b) **Basawraj and Anr. vs. The Spl.Land Acquisition Officer** reported in (2013)14 SCC 81.

. I have gone through paragraph Nos.9 to 13 and 15. Following the principles laid down therein, I have come to the conclusion that inordinate delay can not be condoned.

c) **K.B.Lal (Kirshna Bahadur Lal) Gyanendra Pratap and Ors.** reported in (2024) 4 SCR 616.

. In this case, Hon'ble Apex Court culled down the principles in paragraph No.10 *inter alia* referring to various decisions. I propose to follow the following principles for rejection the application :

“21.4. (iv) No presumption can be attached to deliberate causation of delay but, gross negligence on the part of the counsel or litigant is to be taken note of.

21.5. (v) Lack of bona fides imputable to a party seeking condonation of delay is a significant and relevant fact.

21.6. (vi) It is to be kept in mind that adherence to strict proof should not affect public justice and cause public mischief because the courts are required to be vigilant so that in the ultimate eventuate there is no real failure of justice.

21.7. (vii) The concept of liberal approach has to encapsulate the conception of reasonableness and it cannot be allowed a totally unfettered free play.

21.8. (viii) There is a distinction between inordinate delay and a delay of short duration or few days, for to the former doctrine of prejudice is attracted whereas to the latter it may not be attracted. That apart, the first one warrants strict approach whereas the second calls for a liberal

delineation.

21.9. (ix) The conduct, behaviour and attitude of a party relating to its inaction or negligence are relevant factors to be taken into consideration. It is so as the fundamental principle is that the courts are required to weigh the scale of balance of justice in respect of both parties and the said principle cannot be given a total go by in the name of liberal approach.

21.10. (x) If the explanation offered is concocted, or the grounds urged in the application are fanciful, the courts should be vigilant not to expose the other side unnecessarily to face such a litigation.”

e) Pathupati Subba Reddy (Died) by L.Rs. And Ors. vs. The Special Deputy Collector (LA) reported in (2024) 4 S.C.R.241.

The principles collated from various decisions mentioned in paragraph No.26 of the judgment are pressed into service. Merits of the case are not required to be considered in condoning delay, is one of the parameters. In the present case, the plea that legal advice made the applicant to prefer the appeal is unsustainable.

18. For the reasons stated above, Civil application for condonation of delay is rejected. Another civil application is disposed of.

[SHAILESH P. BRAHME, J.]

vsj