

rrpillai

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
INTERIM APPLICATION NO. 380 OF 2025
IN
SECOND APPEAL (ST) NO. 676 OF 2025
WITH
INTERIM APPLICATION NO. 381 OF 2025

Shivaji Shankar Kanhere and Others ... Applicants

Vs.

Sonali Mahesh Mite and Others ... Respondents

Mr. Prasad Kulkarni a/w. Mr. Nakul Vivek Shukla for the Appellants.

CORAM : GAURI GODSE, J.

DATE : 10th JANUARY 2025

ORDER :

1. Heard learned counsel for the applicants. This application is filed by defendant nos. 2 and 3, for condonation of delay of two years and 351 days in filing the appeal. Learned counsel for the applicants submits the delay in filing the second appeal is unintentional. He submits that applicant no. 1 is an Electrician and he is unaware about the procedural aspects. Hence, immediate steps were not taken to file application. He further submits that applicant no. 2 is a brick layer and working as a labour. Hence, he

was unable to take steps within time. Learned counsel for the applicants relies upon the reasons stated in the application in paragraph nos. 11 to 13.

2. The second appeal arises out of rejection of the applicants' application for condonation of delay in filing the first appeal. The first appeal is preferred to challenge an ex-parte decree against the applicants. The trial court had decreed the suit by declaring that the sale deed executed by defendant no. 1 in favour of defendant nos. 2 and 3 is not binding upon the plaintiffs' share. The trial court decreed the suit granting share to the plaintiffs. The first appellate court has dismissed the applicants' application for condonation of delay of 8 months and 9 days.

3. Learned counsel for the applicants submits that the first appellate court has not correctly appreciated Order V Rule 15 of the Civil Procedure Code, 1908 ("CPC") which requires the bailiff to find out as to whether there is any likelihood of the defendant being found at the residence before effecting service on other family member. He therefore submits that the second appeal would require consideration on the point of correct interpretation of Order V Rule 15 of the CPC and the reasons recorded by the first appellate court on the bailiff's report.

4. I have perused the reasons recorded in the impugned order. The learned judge has referred to the bailiff's report which indicates that the suit summons was served upon defendant no. 2 for himself and for defendant no. 3. The certified copy of the bailiff report is perused by the learned judge. In the impugned order the learned Judge has recorded that the summons were properly served. As per the bailiff report suit summons of defendant no. 2 was received by defendant no. 3 i.e. his brother. There is no dispute on the contents of the bailiff's report. The applicants have not adduced any evidence to indicate that defendant no.3 was unaware about the suit summons received by defendant no. 2 for himself and on behalf of defendant no. 3. The defendants have not led any evidence to dispute the bailiff's report. There is no application made for examining the bailiff.

5. It is well settled principle of law that the suit summons can be served upon an adult member of the family. Even otherwise it is not the applicants' case that defendant no. 3 was unaware of the suit summons. There is no dispute on the receipt of the suit summons by defendant no. 2 who is applicant no. 1 in the present application as well as in the first appeal.

6. In view of these facts and circumstances, the reasons

recorded by the first appellate court would not require any consideration by this court. In the absence of any evidence on behalf of the applicants the reasons recorded by the first appellate court cannot be faulted. Hence, the grounds argued on behalf of the applicants does not raise any substantial question of law.

7. Division of the property as per the impugned decree is complete. The second appeal is filed as possession warrant was issued pursuant to the division of the property. The impugned decree does not cancel the sale deed in favour of the applicants. Hence, the applicants who are stranger purchasers would step into the shoes of defendant no. 1 through whom they claim right in the suit property. Hence, no prejudice is caused to them. It is not even the applicants' case that the entire suit property was purchased by the applicants. Hence, no prejudice would be caused to the applicant .

8. The application for condonation of delay is bereft of any explanation as to any steps taken to find out the stage of the application for delay condonation in the first appeal. The present application makes vague allegations against the applicant's Advocate that there was communication gap between them. The reasons in the application for condonation of huge delay of almost

three years are not satisfactory and justifiable. It appears that only to stall the execution of the decree the present appeal is filed at a belated stage, when possession warrant is issued. Hence, for want of any satisfactory and justifiable reasons the delay of almost three years cannot be condoned. Hence, application is rejected.

9. In view of the rejection of the application for condonation of delay, the second appeal and pending applications for interim relief stand dismissed.

[GAURI GODSE, J.]