

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIRCUIT BENCH AT KOLHAPUR
SECOND APPEAL NO.166 OF 2022
WITH
CIVIL APPLICATION NO.416 OF 2019
IN
SECOND APPEAL NO.166 OF 2022**

Dhanayya Gurushantayya Swami
Age-72 Years, Occu.-Agriculturist,
R/o.- Tadwal, Tal.- Akkalkot, Dist.-Solapur ..Appellant
(Orig. Defendant No.1.)

Versus

1. Malayya Irayya Swami
Age-47 Years, Occu. - Agriculturist,
R/o. Tadwal, Tal. - Akkalkot, Dist. - Solapur
2. Basayya Sidramayya Swami
Age-47 Years, Occu. Agriculturist,
3. Rudramani Sidramayya Swami
Age-67 Years, Occu. - Retired,)
Respondent No.2 & 3 are R/at - Plot No.69,
Ambika Nagar - B, Akkalkot Road, Solapur
4. Sharnayya Sidramayya Swami
Age-62 Years, Occu. - Agriculturist,
R/o. -Boramani, Tal. - Akkalkot, Dist. - Solapur
5. Chandrashekhar Sidramayya Swami
Age-60 Years, Occu. - Agriculturist,
R/o. -Mundewadi, Tal. - Akkalkot, Dist. -Solapur
6. Shadakshari Sidramayya Swami
Age-46 Years, Occu. - Labour,
7. Vrushabharudh Sidramayya Swami
Age-43 Years, Occu. - Labour,
Respondent No.6 & 7 are R/at-Plot No.69,
Ambika Nagar-B, Akkalkot Road, Solapur,
8. State of Maharashtra. ..Respondents
(Respondent No.1-Orig. Plaintiff)

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Mr. Abhijit D. Kulkarni a/w Mr. Abhay A. Jadhavar, Advocate for Appellant.

Mr. Shivam M. Walekar i/by Mr. Samir Kumbhakoni, Advocate for Respondents.

CORAM : S. G. CHAPALGAONKAR, J.
DATED : 13th NOVEMBER, 2025.

FINAL ORDER:-

1. The appellant/original defendant no.1 impugns order dated 05.04.2018 passed by District Judge, Solapur in Civil Miscellaneous Application No.1/2018, whereby Principal District Judge refused to condone delay caused in filing Appeal against judgment and decree passed by Civil Judge Junior Division, Solapur in Regular Civil Suit No.426/2015.

2. The appellant is original defendant no.1 in Regular Civil Suit No.426/2015. The respondent no.1-Malayya instituted suit seeking partition and separate possession of suit property i.e. land Gut No.162 admeasuring 1H 26R. Admittedly, it was originally owned by Irayya Rudrayya Jangam (Swami). The appellant/defendant no.1 claims to be grandson of said Malayya. It appears that, he was served with suit summons. However, failed to cause his appearance. Even second notice was served upon him before judgment, but no appearance was caused. Ultimately, suit came to be decreed granting one half share to plaintiff in suit property, whereas appellant/defendant is held entitle for 1/4th share. The appellant filed Appeal before District Judge at Solapur alongwith MCA No.1/2018 seeking to condone delay of 10 months and 17 days caused in filing Appeal. However, District Judge

rejected said application vide impugned order dated 05.04.2018. Hence, this Second Appeal.

3. Heard Mr. Abhijit Kulkarni, learned Advocate appearing for appellant and Mr. Shivam Walekar, learned Advocate appearing for respondents on following substantial question of law.

Whether District Judge is justified in rejecting application seeking condonation of delay on the ground that appellant has knowledge of proceeding without considering fact that appellant had no knowledge about decree, as such, delay is duly explained?

4. Apparently, appellant filed Appeal before District Judge. After getting notice from Revenue Authority about decree, he obtained certified copy of judgment and decree on 06.12.2017 and filed Appeal on 21.12.2017. The appellant explained delay stating that he was not properly served with suit summons and after getting knowledge of decree, he took necessary steps for filing Appeal. The District Judge observed in impugned order that appellant was served with suit summons on 29.11.2016, but he did not participate in further proceeding. In this background, plaintiff cannot contend that he had no knowledge of decree. The aforesaid observation is erroneous for reason that appellant was served with suit summons or notice of proceeding of suit, but appellant has averred that he had no knowledge

of decree. The respondent could not demonstrate that appellant had knowledge of decree passed by Court, which is subject matter of Appeal. The appellant has specifically averred in application that he got knowledge of decree only when he received notice on 17.11.2017 from Revenue Authority informing him about decree passed against him. In this background, it cannot be said that appellant failed to make out sufficient cause to condone delay.

5. Apparently, dispute in suit is regarding rights over immovable property. The delay of 10 months and 17 days in filing Appeal cannot be treated inordinate or intentional. It is true that, respondent/plaintiff would suffer inconvenience on account of delayed filing of Appeal. However, in facts of present case, when Appeal is filed immediately after getting knowledge of decree, delay needs to be condoned subject to compensatory cost.

6. In result, substantial question of law as framed is answered in negative. Hence, following order:

ORDER

- a. Second Appeal is allowed.
- b. The impugned order dated 05.04.2018 passed by Principal District Judge, Solapur in Civil Miscellaneous Application No.1/2018 is quashed and set aside.

c. The delay of 10 months 17 days caused in filing Appeal against judgment and decree passed in Regular Civil Suit No.426/2015 is condoned subject to condition that appellant deposits cost of Rs.10,000/- before District Judge within 45 days of this order. Cost to be paid to respondent no.1. The non-payment of cost within stipulated period would entail dismissal of Civil Miscellaneous Application No.1/2018 without further reference to Court and decree passed by Trial Court would be treated as confirmed.

d. In view of disposal of Second Appeal, pending Civil Application also stands disposed of.

(S. G. CHAPALGAONKAR)
JUDGE