

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

INTERIM APPLICATION NO.2012 OF 2024
IN
FIRST APPEAL (ST.) NO.4566 OF 2024

Girish Vithal Turki Through
His CA-Sharvari Udayshankar Keskar ... Applicant.

In the matter between:

Girish Vithal Turki Through
His CA-Sharvari Udayshankar Keskar ... Appellant.

Versus

Bhausahab Bhikanrao Fuke ... Respondent.

Ms. Harshali R. Gupte for the Applicant.
Mr. Namit Pansare i/by Mr.Drupad Patil for the Respondent.

Coram : Sharmila U. Deshmukh, J.

Date : February 24, 2025

P. C. :

1. Interim Application has been preferred seeking condonation of delay of 1469 days caused in preferring the First Appeal. The First Appeal challenges the order of the Civil Judge Senior Division dated 5th October, 2019 rejecting the Appellant's Application for Probate of Will executed by one late Shailaja Fuke in favour of the Appellant.

2. Learned counsel appearing for the Applicant submits that against the order of the Civil Judge Senior Division, Khed, First Appeal was preferred before the District Court by way of Regular

Civil Appeal No.105 of 2019 within time. She submits that vide judgment dated 19th October, 2023, the District Court by relying upon the decision in the case of ***Smt.Nola Jonathan Ranbhise vs. The Government of Maharashtra, decided on 14th February, 2024 in Writ Petition No.2777 of 2013*** has returned the Appeal for filing in this Court. She submits that in view thereof, Section 14 of the Limitation Act, 1963 is available to the Applicant and therefore, the period is required to be excluded for the purpose of computing the period of limitation.

3. Learned counsel appearing for the Respondent would submit that the Respondent had filed an Application for succession certificate whereas the Applicant had filed an Application for Probate. He submits that his Application came to be allowed and the Applicant's Application for probate came to be dismissed. He submits that the Respondent has preferred review of the judgment dated 19th October, 2023, as according to him, the Appeal would lie before the District Judge. He would further submit that the pleadings in the Application do not seek benefit of Section 14 of Limitation Act, the application is under Section 5 of the Limitation Act. He would submit that the delay is sought to be condoned on the ground of medical ailment which is not substantiated.

4. I have considered the submissions and perused the record.

5. The Application which has been filed seeks condonation of

delay of 1469 days caused in preferring the First Appeal. Though the Application has not happily drafted inasmuch as the appropriate relief to seek is exclusion of the period spent by the Applicant in prosecuting the proceedings before the District Court, the submissions canvassed as well as the annexures to the Application would indicate that the relief which is sought by the Applicant, is in fact, an application under Section 14 of Limitation Act, 1963.

6. It cannot be disputed that the Applicant had challenged the impugned judgment dated 5th October, 2019 by filing an Appeal before the District Judge within time. By order of 19th October, 2023, the Court had returned the Appeal to the Appellant by holding that the Appeal lies before this Court and therefore, the present Application came to be filed. Section 14 of the Limitation Act, which deals with the exclusion of period while computing the period of limitation provides for excluding the period where the proceedings for being prosecuted bonafide by the Applicant in a Court which for reason of defect of jurisdiction or any cause of a like nature is unable to proceed with the hearing. In the present case, what was required to be considered is the exclusion of the said period while computing the period of limitation. Even if no application would have been filed for while computing the period of limitation, the period which was spent by the Applicant

prosecuting the Appeal before the District Court is liable to be excluded. The application satisfies all ingredients of Section 14 of the Limitation Act, as it is nobody's case that the Appeal proceedings before the District Court were not bonafide or that the same were not returned for defect of jurisdiction.

7. In light of the above, the Interim Application is allowed. The period during which the proceedings were pending before the District Court is liable to be excluded while computing the period of limitation for the purpose of filing the First Appeal. When so computed, the First Appeal is within time.

8. Interim Application stands disposed of in the above terms.

[Sharmila U. Deshmukh, J.]