



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

SECOND APPEAL NO.213 OF 2025

APPELLANT :- Smt. Narmadabai Shivprasad Kasat,
Aged about 86 years, Occ. Household
and Agril. R/o Civil Lines, Risod, Tq.
Risod, Dist. Washim.

..VERSUS..

RESPONDENTS :- 1) Bhagwandas Shivprasad Kasat aged
about 62 years, Occ. Business and
Agril.
2) Sau. Prema Bhagwandas Kasat Aged
about 59 years, Occ. Business and
household,
3) Sahil Bhagwandas Kasat, Aged about
37 years, Occ. Service,
4) Govind Shivprasad Kasat (Died) (His
legal heirs are already on record.)
5) Sau. Rekha Govind Kasat, Aged about
57 years, R/o-c/o Shrikant Bhikulal
karwa, Anant Colony, Ioni road Risod
Tq. Risod Dist Washim, Occ.
Household work.
6) Ku. Shrutika Govind Kasat, Now
Married-Shrutika Nitesh Daga, Aged
about 32 years, Occ. Household R/o-
Gopal stores, cement, road, Pipariya
Tq. Pipariya, Dist. Hoshangabad
7) Sandesh Govind Kasat, Aged about
27 years, Occ. private, R/o-c/o
Shrikant Bhikulal karwa, Anant

Colony, Ioni road Risod Tq. Risod
Dist. Washim, Occ. Household work

- 8) Gopal Shivprasad Kasat, Aged about 56 years, Occ. Agriculture,
- 9) Sau. Sushama Gopal Kasat, Aged about 54 years, Occ. Household work,
- 10) Gaurav Gopal Kasat, Aged about 33 years, Occ. Private,
- 11) Purva Gopal Kasat, Aged about 23 years, Occ. Private, Except 5 to 7 All R/o Civil Lines, Risod, Tq. Risod, Dist. Washim.
- 12) Sau. Nirmala Gourishankarji Mantri, Aged about 60 years, Occ. Household work, R/o Behind Janata Bank Arogya Dham, Madhav Magar, Akola, Tq. And Dist. Akola.
- 13) Sau. Sunita Ashokji Rathi, Aged about 54 years, Occ. Household work, R/o Opp. Dr. A. G. Bhangale Hospital, Zilla Peth, Jalgaon, Khandesh, Tq. And Dist. Jalgaon Khandesh.

Mr. J. B. Gandhi, Advocate for Appellant.

Mr R. M. Bhangde, Advocate for the Respondent Nos.5, 6 and 7.

CORAM : ROHIT W. JOSHI, J.

DATE : 16.12.2025

ORAL JUDGMENT :

- 1) Heard finally with consent of learned Advocates appearing for the respective parties.

2) Notice in the present Second Appeal was issued on the following substantial question of law:-

“Whether the appeal against the decree passed on the basis of a compromise petition is not appealable under Order 43 Rule 1-A(2) of the Code of Civil Procedure even if the bar is given under Sec.96(3) of Civil Procedure Code ?”

3) The present appellant has filed Civil Misc. Application No.143 of 2023 *inter alia* seeking condonation of delay in filing appeal to challenge judgment and decree dated 06.08.2018 passed by the learned Civil Judge, Senior Division, Washim in Regular Civil Suit No.20 of 2013. Regular Civil Suit No.20 of 2013 is filed by the present appellant for partition and separate possession. The said suit is disposed of in terms of compromise arrived at between the parties by compromise decree dated 04.08.2018. The present appellant, her three sons and two daughters are parties to the said suit. The family members of nuclear families of the sons are also parties to the suit. In the said suit, an application under Order 23 Rule 3 of the CPC came to be filed on 04.08.2018. The learned Trial Court has disposed of the suit

in terms of compromise by passing the following order:-

“plaintiff and defendant present alongwith their Advocates. They affirmed the contents of compromise, hence R&R”

4) Pursuant to the said order a comprise decree is passed and the suit is disposed of accordingly.

5) The present appellant has filed an appeal challenging the said comprise decree alongwith an application for condonation of delay on 07.08.2023. Perusal of the application for condonation of delay will demonstrate that the appellant has stated that she is an old lady aged about 84 years who is not able to move freely and walks with great difficulty with help of other persons or a walker. She claims that she has lost her hearing capacity somewhere around the period when she was around 70 years of age. She has stated in the application that in the year 2013, there was a property dispute in the family and her sons were quarreling with each other in relation to the said property dispute. It is stated that the daughters were also called in order to arrive at some reconciliation and for amicable and peaceful

partition of the properties. She has further alleged that her son, Govind was looking after her and that taking undue advantage of the situation he forced her to sign certain documents by exercising undue influence and filed the suit for partition making use of the said documents. It is stated that the appellant was not aware about filing of the suit. She has further alleged that in the month of August 2018, her son Govind obtained her signatures on certain blank papers without making it known to her as to why the said signatures were taken. It is further stated that it was represented to her that signatures were being obtained in order to save the properties by filing some applications before revenue authorities. She has alleged that she has signed the documents keeping blind faith on her son Govind. The appellant has alleged that she received a legal notice dated 03.07.2023 from legal heirs of Govind, calling for partition of the properties as per compromise decree. It is stated that after receiving the notice she got knowledge about the alleged compromise decree and thereafter she called her daughter and obtained certified copies of relevant documents

with her help by engaging an Advocate. It is averred that the appellant got knowledge about the alleged compromise decree for the first time on 03.07.2023 on receiving notice from legal heirs of her son, Govind.

6) As stated above, the said application came to be rejected vide order dated 08.01.2025. The learned First Appellate Court has recorded that since the appeal was filed against a comprise decree, the appeal was not maintainable and therefore no fruitful purpose will be served by condoning the delay. The learned First Appellate court has also dealt with the aspect of delay and has recorded a finding that when the appellant was personally present before the learned Trial Judge while the comprise was recorded, it cannot be heard from her that she was not aware about the compromise decree. The learned First Appellate Court has also observed that the contents of the application were vague and difficult to believe.

7) Heard Mr. Jagvijay Gandhi, learned Advocate for the appellant. Mr. Gandhi contends that the observations made by the learned First Appellate Court with respect to

maintainability of the appeal are completely unsustainable in view of Order 43, Rule 1-A(2) of the CPC. He contends that an appeal can be filed challenging a compromise decree if the factum of compromise itself is disputed. He has placed reliance on the judgment of the Hon'ble Supreme Court in the matter of *Prasanta Kumar Sahoo Vs. Charulata Sahu*, reported in *AIR Online 2023 SC 763*, in support of his contention.

8) As regards the merits of the delay application, the learned Advocate contends that it is not in dispute that the appellant is an old lady who was aged about 84 years when the application was filed. It is contended that the learned First Appellate Court ought to have believed the version of the appellant with respect to filing of the suit and manner in which the signatures on the application for passing the compromise decree were obtained. The learned Advocate further contends that while dealing with application for condonation of delay, the Court must adopt a liberal approach and normally contents of the application must be accepted unless there is reason to disbelieve them. It is

contended that no such reason is recorded by the learned First Appellate Court.

9) Per contra, Mr. Rahul Bhangde, the learned Advocate for respondent Nos. 5, 6 and 7, contends that the contents of the application are not only vague but also contrary to the record. He contends that since a case of fraud is being set up, it is necessary to examine the averments in the application at the touchstone of Order 6 Rule 4 of the CPC. He draws attention to the order recording compromise passed by the learned Trial Court and contends that the learned Trial Court has recorded that all the parties to the suit were present before it and that this fact is not disputed in the application. He further draws attention to the application to contend that all pages of the application are signed by the applicant and further that she has also affirmed the contents thereof. He also draws attention to the fact that the affidavit of the applicant in support of the application for passing compromise decree is affirmed before Superintendent of the Civil Court. Mr. Bhangde also contends the fact that the compromise was specifically affirmed by the parties before

the learned Trial Court is also recorded in the order dated 04.08.2018. He contends that the record of the Court is sacrosanct and there is no reason to disbelieve the observation made by the learned Trial Court regarding the fact that all the parties have affirmed the contents of the compromise before it.

10) Having perused the contents of the application, the application for passing compromise decree and order passed thereon, I am of the opinion that there is no reason to take a different view of the matter than the one which is taken by the learned First Appellate Court. I am in complete agreement with Mr. Bhangde that an application for condonation of delay, when delay is sought to be condoned on the ground of fraud, must satisfy all the requirements of Order 6 Rule 4 of the CPC. The contents of application, particularly when the delay is inordinate, must be clear and precise and must provide all material facts with material particulars.

11) In the case at hand, the applicant has stated that she was not aware about the filing of the suit and that the

suit was filed by misusing her signatures. Perusal of the plaint will demonstrate that the signature of the plaintiff appears on the plaint alongwith her Advocate. The contents of the plaint are verified and affirmed and the affidavit is sworn before Court Superintendent. There is no statement in the application that the applicant had never visited the Civil Court for affirmation of the plaint. Likewise, the application for passing compromise decree under Order 23 Rule 3 of CPC is signed by the applicant. Her signature appears on each page of the application. She has also verified and affirmed the contents of the application. Once again the affidavit is sworn before the Superintendent of the Civil Court. Here also there is no statement that the applicant did not visit the office of the Superintendent for swearing the affidavit. Similarly, there is no statement in the application that the applicant was personally not present before the learned Trial Court when the compromise was recorded.

12) In paragraph 8 of the memorandum of appeal, the appellant has stated that she was not called inside the Court hall while recording the compromise since she was around 79

years old then. The statement in the memorandum of appeal would suggest that the appellant was present in the Court premises on the said date when the compromise decree was passed. This negates the case of the appellant that she was not aware about filing of the civil suit or passing of the compromise decree till she received the aforesaid notice on 03.07.2023.

13) Likewise, in paragraph 12 of the memorandum of appeal a statement is made that respondent Nos.13 and 14 in the appeal were also not present in the Court and that their signatures were taken on at the residence of the appellant. This will also indicate that the appellant had knowledge about the happenings and was aware about passing of the compromise decree.

14) The appellant has stated that she has filed the appeal with assistance of her daughter. The appellant is blessed with two daughters. She has not even named the daughter with whose assistance she had contacted Advocate for the purpose of filing appeal.

15) It is thus clear that, the appellant has failed to make out a case for condonation of delay of around 4 years and 10 months in filing the appeal. The contents of the application and the memorandum of appeal, in fact, go on to show that the appellant was all the while aware about the compromise decree and has made an incorrect statement in the application that she was not aware about filing of the suit and the compromise decree till around 03.07.2023.

16) Since the delay is not properly explained and rather the contents of memorandum of appeal go on to show that the appellant was all the while aware about the compromise decree, the substantial question of law framed with respect to maintainability of the appeal need not be answered since the appellant is unable to cross the initial hurdle of condonation of delay. The substantial question of law framed vide order dated 04.08.2025, therefore does not arise for consideration. Second Appeal is therefore **dismissed** with no order as to costs.

(ROHIT W. JOSHI, J.)

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