



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

CIVIL APPLICATION (CAS) NO.332 OF 2018

IN

SECOND APPEAL ST. NO.25415 OF 2017

Shri Ganpati S/o Govinda Wasekar, Armori, Dist. Gadchiroli

-vs-

Smat Tanabai w/o Tukaram Naitam (Abated) Shri Wasudeo S/o Tanu Sahare, Tah. Dhanora,
Dist. Gadchiroli and ors.

Office notes, Office Memoranda of
Coram, appearances, Court's orders
or directions and the Registrar's orders.

Court's or Judge's Orders.

Shri Rohan Bhishikar, Advocate h/f Shri N. R. Bhishikar, Advocate for applicant.
Ms Shreya Bhagat, Advocate h/f Shri P. R. Agrawal, Advocate for respondent No.2.

CORAM : NTIN W. SAMBRE, J.

DATE : April 09, 2025

P. C.

1. In a suit for partition and separate possession being R.C.S. No.23/2003, the present applicant was impleaded as defendant No.2. The said suit proceeded *ex-parte* against the applicant and was decreed on 23/12/2005 whereby the defendants were directed to hand over 1/7th share each to the plaintiff.

2. After the said decree was passed, the first appeal along with Misc. Civil Application No.8/2007 for condonation of delay was filed. The said Misc. Civil Application came to be rejected on 31/03/2007 by the Ad-hoc District Judge-1, Gadchiroli. As a sequel of which the prayer for condonation of delay in preferring the first appeal was rejected so also the First Appeal.

3. Being aggrieved, the original defendant No.2 through his legal heirs has preferred this second appeal questioning the order of rejection of prayer for condonation of delay passed by the Ad-hoc District Judge-1, Gadchiroli on 31/03/2007.

4. Since the second appeal was preferred at a belated stage, an application is taken out by the applicant praying condonation of 3797 days' delay.

5. It is the contention of the counsel for the applicant that the delay in preferring second appeal of 3797 days is bonafide. According to him the original plaintiff/decreed holder is not entitled for the relief of partition and separate possession. It was the original defendant No.1 who was looking after the litigation for and on behalf of all the defendants/judgment debtors has failed to take appropriate steps, which has resulted in the suit proceeding *ex-parte*. According to him though the first appeal that was filed was at a much belated stage, the delay was sought to be condoned for the reason of the conduct of the defendant and his lawyer. Such conduct has caused prejudice to the applicant as by not filing written-statement same has led to the suit proceeding *ex-parte*. As such it is claimed that the first Appellate Court so also this Court ought to be sensitive to the law laid down in the matter of *Esha Bhattacharjee vs. Managing Committee of Raghunathpur Nafar Academy and ors. (2013) 12 SCC 649*.

According to him the Court should have liberal, pragmatic, justice oriented and non-pedantic approach while dealing with the prayer for condonation of delay as the injustice cannot be legalised. It is further claimed that sufficient cause in the matter of consideration of prayer for condonation of delay should be understood in proper spirit, philosophy and purpose. That being so, it is claimed that the delay caused in preferring second appeal is entitled to be condoned.

6. As against above, the counsel appearing for the non-applicant/decreed-holder has opposed the prayer. It is urged that in the proceedings in question not only before this Court but since the inception conduct of the applicant/appellant has been negligent. It is claimed that not only the applicant has chosen not to appear before the trial Court as the suit was proceeded *ex-parte*, the applicant has chosen to prefer the first appeal after a delay of more than two years whereas the present second appeal is preferred after an unexplained delay of 3797 days. It is as such claimed that the application is liable to be rejected.

7. Having considered the rival claims, on fact what is required to be noted is the suit for partition and separate possession which was decreed and it is not that the applicant/defendant is held to be not entitled to share.

8. The applicant has chosen not to appear in the suit resulting into the suit being proceeded *ex-parte* and after an unexplained delay of two years, preferred first appeal which was rejected for failure to demonstrate sufficient cause in support of prayer for delay condonation.

9. One can understand if the applicant/appellant would have immediately moved before this Court seeking challenge to the order of the first Appellate Court. However, after lapse of almost ten years, the applicant/appellant has approached this Court seeking condonation of delay thereby claiming that other defendants were not taking care of his interest.

The applicant has neither examined any defendant as witness to establish the above fact viz. the other defendant has failed to take care of his interest or that of the contesting defendant has failed to inform him about the adverse decree in the suit.

10. The applicant/appellant on facts has failed to demonstrate that he has established sufficient cause so as to establish the question of law that first Appellate Court has failed to consider sufficient cause. Rather, the cause which is cited in support of the prayer for condonation of delay in preferring the second appeal cannot be said to be germane and could not be said to be establishing sufficient cause or bonafide cause in support of prayer for condonation of delay.

11. In the given set of facts and circumstances, the support drawn by the applicant/appellant in the matter of *Esha Bhattacharjee* (supra) could be of hardly any assistance as condoning delay of ten years cannot be said to be ordered by having pragmatic and justice-oriented approach particularly when leave apart sufficient cause, even cause is not established.

12. That being so the prayer for condonation of delay stands rejected. The application stands dismissed. Consequently the second appeal also stands dismissed.

13. Considering that the decree was passed way back in 2005, the Executive Court is directed to expeditiously proceed with the execution proceedings by giving effect to the judgment and decree passed by the trial Court.

All pending civil applications also stand disposed of accordingly.

(Nitin W. Sambre, J.)