



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

SECOND APPEAL NO. 310 OF 2024

Rakhi Govind Malani
Aged about : 51 Years, Occu : Household;
R/o Sun City, Kanchan Bagh, Raipur Naka,
Rajnandgaon, District Rajnandgaon (State
of Chhattisgarh)

... **APPELLANT**

VERSUS

1. Nareshkumar Bankatlal Daga
Aged about 70 Years, Occu : Business; R/o
Flat No. 201, 2nd Floor, Krishnakamal
Residence, Badnera Road, Amravati, Tahsil
and District Amravati
(Original Plaintiff)

2. Bankatlal Ramjivan Daga (Dead)
(Died during pendency of suit)
Through his L.Rs.

(Original Defendant No.1)

3. Smt. Annapurnabai Bankatlalji Daga
(Died during the pendency of suit)
Through his L.Rs.

(Original Defendant No.2)

Legal heirs of Respondent Nos.2 and 3

3(i) Indira Ramesh Laddha
Aged about 72 Years, Occu : Household;
R/o Bramha Chaianya Apartment, Near
Hedgewar Blood Bank, Satav Chowk,

Jatharpeth, Akola, Tahsil and District Akola.

[Original Defendant No.2(i)]

- 3(ii) Sushila Alias Shashi Suryakant
Chitlangya, Aged about 63 Years, Occu :
Business, R/o Shankar Bhavan, Ganj Line,
Rajnandgaon (C.G.)

[Original Defendant No.2(ii)]

- 3(iii) Niraj Bajrangelal Laddha
Aged about 55 Years, Occu : Business, R/o
Jaju Krishi Udyog, Plot No. F-4, MIDC,
Mehkar Road, Chikhali, Distt. Buldhana.

[Original Defendant No.2 (iii)]

- 3(iv) Sapna Sunil Baheti
Aged about 53 Years, Occu : Business, R/o
C/o Ramjivanji Baheti, Near Bus Stand,
Murtizapur, Distt. Akola.

[Original Defendant No.2(iv)]

- 3(v) Mona Kamalkirshore Rathi
Aged about 49 Years, Occu : Household,
R/o G-1, Saptashrunji Residency-4 Raigad,
Colony, Near Bramha Sabha, D. P. Road,
Khamgaon, Distt. Buldhana

[Original Defendant No.2(vi)]

4. Narendrakumar Bankatlalji Daga
Aged about 70 Years, Occu : Business, R/o
A-83, Urban Renaissance, Muktagiri Colony,
Near Patal Bhairavi Temple, Rajnandgaon
(C.G.)

[Original Defendant No.3]

5. Sau. Madhu Narendrakumar Daga
Aged about 65 Years, Occu : Business, R/o

A-83, Urban Renaissance, Muktagiri Colony,
Near Patal Bhairavai Temple, Rajnandgaon
(C.G.)

[Original Defendant No.4]

6. Jai Babari Builders
A partnership firm through its partners
Shri Darshan Shrikisanji Kalantri, Aged
about 48 Years, Occu : Business, R/o
Jaffarjin Plot, Old Cotton Market Road,
Amravati, Tahsil and District
Amravati-444601.

[Original Defendant No.5]

7. Darshan Shrikisanji Kalantri
Aged about 48 Years, Occu : Business, R/o
Jaffarjin Plot, Old Cotton Market Road,
Amravati, Tahsil and District
Amravati-444601

[Original Defendant No.6]

... RESPONDENTS

Mr. Amit Buxy, Advocate for Appellant.

Mr. J. B. Kasat, Advocate for Respondent No.7/Caveator.

CORAM : ROHIT W. JOSHI, J.
DATE : APRIL 29, 2025.

ORAL JUDGMENT

. Heard Mr. Amit Buxy, learned Counsel for the Appellant and
Mr. J. B. Kasat, learned Counsel for the Respondent No.7/Caveator.

2. The Appellant in the present Second Appeal is original Defendant

No.2(v). One Nareshkumar Bankatlal Daga had filed a suit being Special Civil Suit No. 162/2000 for partition and separate possession with respect to the property bearing Survey No. 28/3, admeasuring 0.40 HR along with a building structure standing thereon bearing Municipal House No. 1762, Ward No. 54 situated at Amravati. The Defendant Nos.1 and 2 are father and mother of the original Plaintiff. On demise of the Defendant No.2 – Sau. Annapurnabai Bankatlalji Daga, the mother of Appellant, her daughters were brought on record as her legal representatives, since the sons were already on record as Plaintiff and Defendant No.3. The present Appellant is, thus, legal representative of the original Defendant No.2. The suit was dismissed by the learned trial court vide Judgment and Decree dated 31/8/2018.

3. Being aggrieved by dismissal of the suit, the original Plaintiff preferred an appeal being Regular Civil Appeal No. 177/2018. This Appeal was filed within the prescribed period of limitation. The present Appellant, who is Defendant No.2(v), was also a party to the said Appeal. The Appeal was thereafter withdrawn by the original Plaintiff/Appellant in the said Appeal on 18/1/2022. The Appeal is withdrawn in view of settlement stated to be arrived at between the Plaintiff/Appellant in Regular Civil Appeal No. 177/2018 and the Respondent Nos.6 and 7 i.e. original Defendant Nos.5 and 6.

4. Thereafter the present Appellant i.e. Defendant No.2(v) filed a substantive appeal in order to challenge the decree dated 31/8/2018 passed in Special Civil Suit No. 162/2000. Since there was a delay in filing of the appeal, separate application for condonation of delay came to be filed, which came to be registered as Civil Misc. Application No. 56/2023. The said application for condonation of delay came to be rejected vide order dated 8/2/2024. The Appellant is aggrieved by the rejection of application for condonation of delay, and has accordingly filed Second Appeal.

5. Perusal of the application for condonation of delay will demonstrate that the delay is sought to be explained stating that the husband of the Appellant was suffering from heart problem during September-2016 to January-2023. It is stated that during COVID-19 lock-down period the Appellant could not travel to Amravati, since she was occupied in looking after and taking care of her husband. It is stated that the husband was required to undergo major surgery in the year 2022. The Appellant has stated that she got knowledge about the Judgment dated 30/8/2018 passed by the learned trial court for the first time in the month of January-2023. She claimed that on making enquiry about the case status in the month of February-2023, she realized that the suit was dismissed in the year 2018 itself. It is stated that after obtaining certified copies, appeal was filed immediately on or about

15/3/2022. In the circumstances, there is a delay of 1657 days in filing first appeal. The learned first appellate court has held that the Appellant has failed to provide any plausible explanation for condonation of delay. It is stated that the delay is not properly explained and in view of such observations, the learned first appellate court has dismissed the application for condonation of delay. In such circumstances, present Second Appeal is filed.

6. The learned Counsel for Appellant contends that first appeal is a substantive right of a party and while dealing with applications for condonation of delay, courts should adopt a liberal approach. It is submitted that explanation offered by the parties should normally be accepted and delay should be condoned in the interest of justice. The learned Counsel for Appellant has relied upon the following Judgments of the Hon'ble Supreme Court :

- Inder Singh V/s State of Madhya Pradesh, 2025 SCC OnLine SC 600;
- Suo Motu Writ Petition (Civil) No. 03 of 2020, dated March 08, 2021, [2021] 2 S.C.R. 640;
- Bhivchandra Shankar More V/s Balu Gangaram More and Others, (2019) 6 Supreme Court Cases 387;
- Ummer V/s Pottengal Subida and Others, (2018) 15 Supreme Court Cases 127;

- Executive Officer, Antiyur Town Panchayat V/s G. Arumugam (Dead) by Legal Representatives, (2015) 3 Supreme Court Cases 569;
- Santosh Hazari V/s Purushottam Tiwari (Deceased) By L.Rs. (2001) 3 Supreme Court Cases 179;
- Sanjay alias Kaka V/s State (NCT of Delhi), (2001) 3 Supreme Court Cases 190; and
- Laliteshwar Prasad Singh and Others V/s S. P. Srivastava (dead) through Legal Representatives, (2017) 2 Supreme Court Cases 415.

Out of the above, Judgments at Serial Nos.1 to 5 pertain to Section 5 of the Limitation Act and those at Serial Nos.6 and 7 lay down that first appeal is a substantive right of party.

7. *Per contra*, Mr. Kasat, the learned Counsel for Respondent No.7/Caveator has placed reliance on the Judgment of the Hon'ble Supreme Court in the matter of ***State of Madhya Pradesh V/s Ramkumar Choudhary, 2024 SCC OnLine SC 3612***. He contends that the Appellant has failed to explain inordinate delay of over 4 ½ years in filing first appeal. He has filed medical documents, which were placed by the Appellant before the learned first appellate court, on record of the present Second Appeal for perusal of this Court. Referring to the said documents he points out that the husband of the

Appellant was admitted at Platina Heart Hospital, where he has undergone the angioplasty procedure on 7/7/2022 and was discharged on or around 11/7/2022. He contends that other than this, the other medical papers are not very relevant, since they pertain to routine medicines and ailments. He states that all these documents pertain to treatment received by the husband of Appellant in OPD.

8. It is clear from the record that the original Plaintiff had filed a substantive appeal being Regular Civil Appeal No. 77/2018. The present Appellant is also a party to the said appeal. Perusal of the application will indicate that there is no statement in the application that present Appellant had not received notice in the said appeal preferred by the original Plaintiff. This assumes significance, since the Appellant has made a statement that she came to know about the dismissal of the suit in the year 2018 for the first time in the month of January-2023. There is absolutely no explanation, whatsoever, as to why she was not aware about a decision for a period of around 4 ½ years. That apart, the reason making enquiry all of a sudden in January-2023 is also not mentioned in the application. As stated above, it is not even her case that she did not receive notice in the appeal filed by the original Plaintiff.

9. As regards the alleged ailment of her husband, it is simply stated

that husband was not keeping good health from September-2016 upto January-2023. The statement is a bald statement, in as much as, the particulars of alleged ailment, treatment taken for the same etc.. are not mentioned in the application. True it is that she has stated that in the year 2022 her husband was required to undergo a major surgery. The documents on record also support the said contention that in July-2022 her husband was required to undergo the procedure for angioplasty. The other documents that are placed on record are pertaining to some medical prescriptions and investigations as patient taking treatment in OPD. Pleadings and material on record do not even indicate that husband of Appellant was hospitalized except for one occasion in the month of July-2022.

10. Perusal of the pleadings in the application demonstrate that the applicant has not provided cogent reason and plausible explanation for the inordinate delay. The averments with respect to ailment of her husband are lacking in material particulars, except for one procedure of angioplasty in July-2022. There is no explanation, whatsoever, for the Appellant being unaware about the adverse decree passed in the Special Civil Suit No. 162/2000 for a period of about 4 ½ years.

11. It is true that normally explanation offered for the delay should be

accepted and liberal approach should be adopted in dealing with the application for condonation of delay. It also cannot be disputed that right to file first appeal is substantive right of every litigant. However, in the present case, the contents of the application taken on their face value fail to make out any case for condonation of delay of over 4 ½ years in filing first appeal.

12. It also needs to be mentioned that the application for condonation of delay was filed before the learned District Judge. The scope of present Appeal is to examine as to whether the findings recorded by the learned District Judge in rejecting application can be said to be perverse. Having regard to the reasons recorded by the learned District Judge, while rejecting the application for condonation of delay, it is found that the learned District Judge has considered the explanation offered by the Applicant and has properly dealt with the same. The learned District Judge has also taken into consideration the Judgments of the Hon'ble Supreme Court on the point of condonation of delay and has rejected the application for condonation of delay by a reasoned Judgment. The findings in the Judgment cannot be termed to be perverse by any stretch of imagination.

13. That apart, at the instance of learned Counsel for the Appellant cursorily merits of the case of the Plaintiff were also examined. It is the case of

the Plaintiff that the suit property was owned by his grand-father Ramjivan, who died on 18/5/1992. It is the case that the suit property was self-acquired property of Ramjivan. It is contended that after his demise, the property assumed ancestral character, and therefore, the Defendant No.1, who is son of original owner Ramjivan, could not have dealt with the suit property as his absolute property and transfer the same to his daughter-in-law, the Defendant No.4. The contention is also fallacious. After commencement of the Act of 1956, self-acquired property by a Hindu male, which is inherited by his Class-I legal representatives, is not ancestral property, but is a separate property. Legal position in this regard is crystallized by the Judgment of the Hon'ble Supreme Court in the matter of *Commissioner, Wealth Department V/s Chander Sen, AIR 1986 SC 1753*, which is followed subsequently in several decisions of the Hon'ble Supreme Court as also by this Court.

14. In that view of the matter, in my considered opinion, no substantial question of law arises for consideration in Second Appeal. Second Appeal is, therefore, dismissed with no order as to costs.

(ROHIT W. JOSHI, J.)