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CAS-647-2013
(sr. no.42)

Monday, 9 February, 2015

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

CIVIL APPLICATION NO. 647 OF 2013
(FOR CONDONATION OF DELAY)

IN

SECOND APPEAL (ST) NO. 1879 OF 2013

1. Shri. Gajanan Laxman Chavan
since deceased, through his legal heirs
and Ors.

.....Applicants

: V/S :

1. Shri. Jyotiram Baburao Chavan,
since deceased through his legal heirs

.....Respondents

* * * * *

Mr. R.P. HakePatil h/f. Mr. S.P. Kadam, Advocate for the applicants.

Mr. P.B. Gujar, Advocate for respondents no.1A and 1B.

Coram :- Smt. R.P. SondurBaldota, J.

9th February, 2015.

P.C. :-

1). This Civil Application is for condonation of delay of 350 days in filing the Second Appeal. The applicants are the heirs and legal representatives of original defendant no.5. They claimed to have learnt about the proceedings only in the month of October, 2012. Thereafter, they filed application for certified copy of the impugned order on 9th October, 2012. But certified copy was ready on 15th October, 2012. The applicants collected it on 22nd October, 2012 and filed the application

herein on 10th January, 2013.

2). The order impugned in the appeal is dated 17th October, 2011. Original defendant no.5 died on 26th April, 2012. This would mean that any challenge to the impugned order by original defendant no.5 and became barred by the law of limitation during his lifetime itself. He had not taken any steps whatsoever to challenge the order. Mr. Gujar, the learned Advocate appearing for the respondents no.1A and 1B, points out that defendant no.5 had in fact, after filing his written statement, taken no steps whatsoever for participation in the trial. He neither cross-examined the witnesses of the original plaintiff nor led any evidence. In the appeal proceedings, he did not appear at all. The lower Appellate Court at para-5 of the impugned order has specifically noted these facts. In view of these facts, the heirs of defendant no.5 cannot now file an application for condonation of delay in filing the Second Appeal. It is obvious that, original defendant no.5 was not interested in the proceedings. Hence, the Civil Application is dismissed.

3). In view of dismissal of the above Civil Application, the Second Appeal and Civil Application No. 648 of 2013 taken out for stay become infructuous and do not survive. The same are accordingly disposed off.

(SMT. R.P. SONDURBALDOTA, J)