

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

CIVIL APPLICATION (C.A.S.) NO.1978 OF 2012
IN
SECOND APPEAL ST. NO.26151 OF 2012

(Rujay Shelestin Ludrik Vs. Prabhakar @ Prakash Anant Arolkar and another)

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders.

Court's or Judge's orders.

None for both the parties.

CORAM: R.K. DESHPANDE, J.

DATE: 20th JULY, 2015.

This application seeks condonation of 238 days delay caused in filing the second appeal. The trial court had passed a decree in Regular Civil Suit No.31 of 2001 for perpetual injunction restraining the defendant No.1 from obstructing the peaceful possession of the plaintiff over the suit property on 29.10.2007, in Regular Civil Suit No.31 of 2001. Regular Civil Appeal No.17 of 2009 preferred against it has been dismissed on 23.09.2011. Hence, the original defendant is before this court against the concurrent finding of fact.

The decree for grant of permanent injunction is based exclusively upon the finding of lawful possession of the plaintiff found over the suit property. It is not based upon the title. There is delay of 238 days caused in filing appeal and the explanation is furnished in paragraph 2 to 6 as under:

2. *The Applicant submits that the Applicant is more than 70 years old and he is*

suffering from the asthma and bronchitis. The Applicant cannot travel as per the instructions of the doctor and advised to take complete bed rest and hence the applicant compelled to execute power of attorney in favor of his son.

3. *The Applicant is a permanent resident of Sindhudurga District and having no relatives or source in Mumbai. It is very difficult to the Applicant to stay in Mumbai and find out lawyer to appear in his behalf before this Hon'ble Court.*
4. *The Applicant is a poor and is in financial crises and do not have sufficient money to engage a lawyer to prefer second appeal before this Hon'ble Court.*
5. *The Applicant has good case on merits and balance of convenience always lies on applicant side and if the delay to prefer the second appeal would not be condoned great prejudice would be caused to the Applicant.*
6. *The Applicant has bonafide and sufficient cause to prefer this present application for condonation of delay in preferring the second appeal before this Hon'ble Court.*

I do not find any explanation of acceptable nature to hold that sufficient cause is made out for condonation of delay caused in filing second appeal. Hence, the civil application is dismissed. Consequently, none of the civil applications, if filed, survive in the matter. The same stand disposed of.

JUDGE