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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

CIVIL APPLICATION NO.186 OF 2013
IN
CROSS-OBJECTION (STAMP) NO.26866 OF 2013
IN
SECOND APPEAL NO.811 OF 2002

Bhiva G. Jadhav, since deceased, through L.Rs. Laxman B. Jadhav & Ors. V/s. Sambhaji D. Dige	...Applicants ...Respondent
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Mr.R.V. Bansode for the Applicant.

Mr.Sandesh Patil i/b Ivor Peter D'Cruz for the Respondents /
Appellants in the Second Appeal.

CORAM : R.D. DHANUKA, J.
DATE : 27TH NOVEMBER, 2015.

P.C. :-

1. By this civil application the applicants seek condonation of delay of 10 years and 83 days in filing the cross-objection in Second Appeal No.811 of 2002. The applicants are the original defendants to the suit and the respondent nos.1, 1(a), 1(b) and 1(c), 2, 3, and 4 to the second appeal filed by the appellants. The second appeal was admitted on 20th June, 2005. Admittedly there is delay of 10 years and 83 days in filing cross-objection.
2. With the assistance of the learned counsel for the

applicants, I have perused the reasons recorded in the civil application. The applicants to the civil application are agriculturists. It is the case of the applicants that the notice of the second appeal was served on 3rd June, 2003. In view of there being a communication gap between the advocate on record as well as the present advocate on record in the present proceedings, the applicants sought legal advice. The applicants thus could not file the cross-objection on time. It is also the case of the applicants that the applicants are not well conversant with the court procedure and the formalities and thus could not take any decision earlier to consult the advocate. The applicants therefore, approached the present advocate to argue the matter. After going through the papers of the second appeal, the present advocate on record advised the applicants to file the cross-objection. The applicants thereafter arranged for the court fees and other misc. charges for filing the cross-objection.

3. Learned counsel for the applicants submits that the applicants have partly succeeded before the District Court. The second appeal filed by the original appellants in the year 2002 is pending. He submits that the applicants were not informed that the second appeal filed by the appellants was admitted on 20th June, 2005. He submits that the applicants have good chances of succeeding in the cross-objection and thus the applicants be

permitted to pursue the said cross-objection on merits by condoning the delay. He submits that this Court may impose reasonable costs upon the applicants for this unintentional delay in filing the cross-objection.

4. Mr.Patil, learned counsel for the respondents to the civil application on the other hand submits that the applicants have not explained the delay properly. He submits that the amendments to the Code of Civil Procedure, 1908 about filing of the cross-objection was inserted in the year 2002. The order passed by the trial Court was on 14th August, 2000. He submits that the applicants have not furnished any details about the alleged communication gap between the two advocates. He submits that the applicants have not explained the delay as to why prior to the amendments the applicants had not filed the second appeal independently.

5. It is submitted by learned counsel that in any event the applicants were fully aware of the civil application filed by the parties in which various interim orders were passed in the year 2012 by R.M. Savant, J. He submits that at least on the date of filing such civil application, the applicants were aware and the applicants have not explained the delay between 2012 and 2013 in the civil application.

6. There is no dispute that the impugned order was passed by the Additional District Judge in the year 2000. The respondents to

the civil application had filed the second appeal in the year 2002. The second appeal was admitted on 20th June, 2005.

7. There is a change of advocate by the applicants. It is the case of the applicants that there was communication gap between the two advocates. The applicants were not aware of the order passed by this Court on 20th June, 2005 in second appeal filed by the respondents herein. The applicants thereafter took advice of the new advocate and arranged for payment of stamp duty and other legal expenses and has filed this cross-objection. A perusal of the averments in the civil application, in my view though indicates some reasons, the same are not fully satisfactory. However, the fact remains that the second appeal came to be admitted on 20th June, 2005. The applicants have partly succeeded before the appellate Court. Some of the findings are rendered by the appellate Court against the applicants. The applicants have therefore, filed the cross-objection insofar as the order of the appellate Court is adversely against the applicants.

8. In my view though reasons recorded are not fully satisfactory, in view of the fact that the second appeal filed by the respondent is pending since 2002 and in view of the fact that the applicants have partly succeeded before the appellate Court, it would be in the interest of justice if the applicants are allowed to prosecute

the cross-objection and delay is condoned on the condition that the applicants pay the costs of Rs.50,000/- to the respondents within a period of four weeks from today. It is made however clear that if the costs of Rs.50,000/- is not paid within four weeks from today, the order granting condonation of delay to stand vacated without further reference to the Court and the cross-objection shall stand dismissed without further reference to the Court.

9. I therefore, pass the following order :-

a). The civil application is made absolute in terms of prayer clause (a) on the condition that the applicants pay the costs of Rs.50,000/- to the respondents within a period of four weeks from today. If the costs of Rs.50,000/- is not paid within the aforesaid period, the civil application to stand dismissed without further reference to the Court.

10. If the applicants comply with the order passed today, place the second appeal as well as cross-objection on board for hearing and final disposal in the week commencing from 18th January, 2016.

(R.D. DHANUKA, J.)