

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CIVIL APPELLATE JURISDICTION**

**SECOND APPEAL NO.329 OF 2015  
WITH  
CIVIL APPLICATION NO.739 OF 2015**

Arun Kondiba Saste & Anr. .. Appellants

Vs.

Smt.Lalubhai Choturam Pardeshi .. Respondents

Mr.PB.Shah i/b Mr.Shay Kayval P. for the appellants

Ms.Prabha U. Badadare for the respondent

**CORAM : K.K.TATED, J.  
DATED : 23/09/2015**

**PC:**

1 Heard the learned counsel for the parties.

2 This Second Appeal is preferred by defendant challenging the order dated 10.12.2014 passed by learned District Judge-10, Pune below Exh.1 with Civil Misc.Application No.943 of 2014 dismissing the appellant's application for condonation of 18 months delay in filing Appeal challenging the judgment and decree dated 17.4.2013 passed by Civil Judge, Junior Division, Pune in Regular Civil Suit No.229 of 2011.

3 For the sake of convenience, the nomenclature of the parties as

is stated in the plaint will be referred to hereinafter as the appellants original defendants and respondent plaintiff.

4 The plaintiff filed Regular Civil Suit No.229 of 2011 in the Trial Court for an order of injunction restraining the defendants from removing the door from the property situated at CTS No.265 Mangalwar Peth, Pune and other reliefs. That suit was decreed by the Trial Court on 17.4.2013. Being aggrieved by the said decree, the defendant preferred Appeal before the Appellate Court. As there was delay of 18 months in filing the Appeal, the defendants preferred application for condonation of delay. That application was rejected by the Appellate Court by impugned order dated 10.12.2014. Hence, the present Second Appeal.

5 The learned counsel for the defendants submits that the appellate court erred in coming to the conclusion that the defendants failed to show sufficient cause for condonation of 18 months delay in filing the First Appeal. He submits that the Appellate Court failed to consider the fact that during that period, the defendants were not keeping well and therefore, there was delay on their part to file the Appeal challenging the decree passed by the Trial Court. He further submits that advocate who appeared on behalf of defendant in Trial Court failed to inform the defendants that they have to file their written statement in the suit. He further submits that, that suit was decreed on 17.4.2013. Advocate who appeared on behalf of defendants failed and neglected to communicate the said order to the defendants. He submits that when the plaintiff filed Regular Darkhast No.102 of 2015 for execution of decree passed by Trial Court dated

17.4.2013, they learnt about the order passed against them. He submits that thereafter immediately the defendants applied for certified copy on 27.10.2014 and filed the appeal in the Appellate Court on the same day. He submits that the Appellate Court has not considered merits of the matter at the time of deciding their application for condonation of delay. He submits that defendants have good chance of success in the present proceeding. He submits that in the interest of Justice, this Hon'ble Court be pleased to allow the present Second Appeal by setting aside the impugned order dated 10.12.2014 passed by Appellate Court and direct the Appellate Court to decide the defendants' appeal on its own merits.

6 On the other hand the learned counsel for the respondent plaintiff vehemently opposed the present Second Appeal. She submits that applicant failed and neglected to show sufficient cause for condonation of more than 18 months delay in filing appeal before the appellate court. Hence, the appellate court rightly rejected the defendants' application for condonation of delay. She submits that neither the defendants nor on behalf of defendants anybody entered into the witness box to explain the delay of more than 18 months. Hence, there is no substance in the present Second Appeal and same be dismissed with costs.

7 I have heard both the sides. Considering the submissions made by both the counsel, following question of law is involved in the present Second Appeal :

Whether the learned Lower Appellate Court erred in coming to the conclusion that the Appellants failed to give any sufficient cause for not preferring the Appeal within limitation? ..... No

8 In the present proceeding the Trial Court passed judgment and decree dated 17.4.2013. Thereafter, the defendant filed application for certified copy on 27.10.2014. In their application for an condonation of delay, the defendants failed and neglected to explain why he took more than 17 months for applying certified copy of judgment and decree passed by Trial Court.

9 Apart from that, the defendants have neither explained nor disclosed name of the Advocate who failed and neglected to inform the defendants about the judgment and decree passed by Trial Court. Even in the application for condonation of delay the defendants failed to disclose when they received notice in Regular Darkhast No.102 of 2014 and what steps had been taken thereafter.

10 Bare reading of the application dated 27.10.2014 filed by the defendants for condonation of delay shows that the same was filed in casual manner. It is to be noted that the Apex Court in the matter of Lanka Venkateswarlu (dead) by LRs. vs. State of A.P. and others <sup>1</sup> held that courts do not enjoy unlimited and unbridled discretionary powers to condone the delay. Even our High Court in the matter of Chandrakant s/o Shrimantrao Patil and others vs. Vikas s/o. Balaji

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1 2011(4) Mh.L.J. 104

Parsewar <sup>2</sup> held that if delay has not been explained properly, court should not entertain the application for condonation of delay.

11 Considering these submissions made by the learned counsel for the defendants and the law laid down by the Apex Court as well as High Court, I am of the opinion that defendants have not made out any case. Appellate Court rightly rejected defendant's application for condonation of delay. Hence, question of law is answered in the negative.

12 Second Appeal stands dismissed.

13 In view thereof, Civil Application does not survive. The same is dismissed as infructuous.

**(K.K.TATED, J.)**

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<sup>2</sup> 2011(2) Mh.L.J. 94

**CERTIFICATE**

Certified to be true and correct copy of the original signed order.