IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

CIVIL APPLICATION (C.A.S.) NO.593 OF 2015
IN
CIVIL APPLICATION (C.A.S.) NO.82 OF 2009
IN
SECOND APPEAL ST. NO.29165 OF 2008

(Mohabubai w/o Mohamad Hanif Mahat Vs. Dilawar Gani Mahat and others)

Office Notes, Office Memoramda of Coram, appearances, Court's orders of directions and Registrar's orders.	Court's or Judge's orders.

Shri Anilkumar Patil, Advocate for Appellant.
Shri Rushikesh Patil i/b Shri P.D. Dalvi, Advocate for Res. Nos.4 to 6.

CORAM: R.K. DESHPANDE, J.
DATE: 28th JULY, 2015.

Second Appeal Stamp No.29165 of 2008 was filed sometime in the month of December, 2008 challenging the decision of the Lower Appellate Court in Regular Civil Appeal No.180 of 1998 decided on 05.03.2008. It was accompanied by an application for condonation of delay which came up for consideration before this Court on 20.03.2012. This Court had passed an order on the Civil Application No.82 of 2009 as under:

> *"1. The above Civil Application has been filed for condonation of delay in filing the above Second Appeal. The above Civil Application has been listed from time to time i.e. on 13/1/2012, 10/2/2012 and 28/2/2012. By the order passed 28/2/2012 it was made clear that since the learned counsel*

appearing for the Applicant has sought discharge before the learned Registrar (Judicial) of this court, in the event no appearance is put up on behalf of the Applicant on the next date, appropriate orders would be passed in the above Civil Application.

2. The learned counsel appearing for the Applicant/Appellant states that inspite of the letters addressed to the Applicant/Appellant there is no response from him. In the light of what has been stated herein above, this Court is constrained to dismiss the above Civil Application. The above Civil Application is therefore dismissed for non-prosecution. In view of the dismissal of the above Civil Application for non-prosecution, the Second Appeal does not survive and the same to accordingly stand disposed of as such."

Civil Application No.593 of 2015 was filed for restoration along with prayer for condonation of delay of two years and 322 days caused in filing an appeal. On 10.04.2015 this Court had issued notices to the respondents returnable on 12.06.2015, the notices were waived on behalf of respondent Nos.1 to 3. As per the instructions given by this Court to the office, the matter was shown for admission on the board of 27.07.2015 to find out the bonafide whether the appellant is really interested in conducting the matter for admission or is merely interested in restoration of second appeal.

The learned counsel for the appellant appeared and started arguing the application for restoration. He was told to argue the matter for admission on merits. He states that he is not prepared on merits of the matter and therefore, sought one day's time to produce relinquishment deed. This Court had passed an order on 27.07.2015 as under.

> *"The learned counsel for the appellant submits that in order to make a statement as to whether the relinquishment-deed was filed on record or not, time is granted till tomorrow.*
>
> *Hence, put up this matter tomorrow on 28.07.2015, at Sr. No.1."*

The matter is taken up for admission today.

The learned counsel for the appellant again seeks time to inquire from his client as to whether the relinquishment-deeds were filed on record or not. It was expressed to him that there was no issue framed in respect of the relinquishment of share and the judgment delivered by both the Courts below do not reflect the existence of said document filed on record. He submits that the trial Court granted 1/3rd share to the plaintiff in the suit for partition and separate possession and the Lower Appellate Court has reduced it to 1/9th share in the suit house. He submits that no reasons are recorded in the order of the Lower Appellate Court for reducing the 1/3rd share in 1/9th share.

Perusal of the decision of the trial Court shows that in working out the 1/3rd share in favour of the plaintiff the Trial Court has applied the principles of partition and separate possession available under the Hindu law. The Lower Appellate Court has noted in para 9 itself that Hanafi Law of inheritance defines the distribution of estate and its extent amongst the surviving heirs of deceased Mohammedan. After considering the genealogy the shares are worked out as per Hanafi Law of inheritance. It is not the ground urged by the learned counsel for the appellant that the shares have not been worked out by the Lower Appellate Court in accordance with Hanafi Law of inheritance. The learned counsel for the appellant tried to rely upon the findings recorded by the trial Court in support of his contention that the plaintiff was entitled to 1/3rd share in the suit property. The findings recorded by the trial Court suffered from misconception of law and the Lower Appellate Court has corrected it and worked out the share in the Hanifa Law of inheritance. No substantial question of law arises in this second appeal. The second appeal is dismissed.

JUDGE

NSN