

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

**CIVIL APPLICATION NO.1360 OF 2015
IN
SECOND APPEAL (ST) NO.7065 OF 2015
WITH
CIVIL APPLICATION NO.1361 OF 2015
IN
SECOND APPEAL (ST) NO.7065 OF 2015**

Shri Pandurang Vithal Babar
deceased through L.R.'s

1-A) Shri Rajesh Pandurang Babar and Ors. .. Applicant

vs.

Smt.Ratan w/o. Rajaram Pandit and Ors. .. Respondents

Mr.Sidharth Gadhave i/b Mr.Vijay Killedar for the applicant

CORAM : K.K.TATED, J.

DATED : 10/09/2015

PC:

1 Heard the learned counsel for the applicant.

2 This application is preferred by legal heirs of deceased respondent no.2 Pandurang Vithal Babar for condonation of 21 years 66 days in filing Second Appeal challenging the judgment and decree dated 2.8.1993 passed by 3rd Additional District Judge, Sangli in Regular Civil Appeal No.340 of 1987 confirming the judgment and decree passed by Civil Judge, Junior Division, Vita in Regular Civil Suit No.9 of 1981.

3 The learned counsel for the applicant submits that applicant filed application for certified copy on 6.5.2014. Same was ready for delivery on 30.6.2014 and collected by the applicant. He submits that thereafter, the applicant filed the present Second Appeal in this court on 2.8.2014. Advocate for the applicant submits that defendant no.2 Pandurang Vithal Babar died on 24.2.1997. He submits that the deceased Pandurang Vithal Babar was seriously ill few months prior to his death and on that count he could not inform the status of the present litigation to the rest of the defendants. He further submits that during that period his son Rajesh also met with an accident on 14.6.1993 and had undergone brain surgery. He further submits that because of financial crises applicant could not able to contact immediately their advocates and filed the present Second Appeal in this court. In support of this contention, he relies on paragraph 3 of the Civil Application.

4 The learned counsel for the applicant submits that they learnt the decree passed by both the courts below when they received the notice from the Revenue Officer in respect of execution of impugned decree. He submits that thereafter immediately applicant sought legal opinion at Vita. Thereafter applicant contacted present Advocate at Mumbai and filed the present Second Appeal. He submits that the delay is not intentional but same is caused for want of knowledge of the decree passed by appellate court. He submits that applicant has good chance of success in the present matter. He submits that if delay is not condoned, irreparable loss and injury will be caused to the applicant. He submits that in the interest of Justice, this Hon'ble Court be pleased to condone the delay in filing Second Appeal and matter be heard on

its own merits.

5 I have heard the learned counsel for the applicant at length. It is to be noted that there is a delay of more than 21 years in filing the Second Appeal. In the present proceeding respondent defendant filed Regular Civil Suit No.9 of 1981 in the court of Civil Judge, Junior Division, Vita for partition and separate possession. That suit was decreed by Civil Judge, Junior Division Vita on 29.6.1987. Operative part of the said order reads thus:

“: ORDER :

The plaintiffs' suit is decreed.

It is, hereby, declared that each of the plaintiff and defendant no.1 has got 1/4th share in the suit land.

The plaintiffs are entitled to get the partition and separate possession of their shares. The partition of the suit land is directed to be made by the Collector, Sangli, as per the provisions of Section 54 of the Code of Civil Procedure, in accordance with the aforesaid declaration.

The plaintiffs are entitled to claim mesne profits from the defendant nos.2 to 6 from the date of filing of suit till they get actual possession of

their shares from the defendant Nos.2 to 6. The plaintiffs are directed to get mesne profit determined by making a separate application for that under the provisions of Order XX Rule. 4 Rule made returnable after 12 weeks. 5 In addition to usual mode of service, applicant is permitted to serve respondents by private notice either by registered post A.D. and/or by hand delivery and file Affidavit of Service to that effect. 12 (1)(c) of the Code of Civil Procedure.

The parties to bear their own costs.”

6 Thereafter being aggrieved by the said decree, defendant nos.2 to 6 preferred Regular Civil Appeal No.340 of 1987 in the court of 3rd Additional District Judge, Sangli. That appeal was rejected by the 3rd Additional Judge, Sangli by decree dated 2.8.1993. Defendant no.2, Pandurang Vithal Babar predecessor of the applicant died on 24.2.1997. For more than 2 years the deceased had not taken any steps to file the Second Appeal in this court. Though the applicant in paragraph 3 of the Civil Application stated that they learnt about the orders passed by the courts below when the Revenue Department issued notice for execution of the Judgment and Decree passed by Trial Court, the applicant has not given any date when notice in Execution Application was served on them. Apart from that the applicant failed to disclose sufficient cause for condonation of more than 21 years delay in filing Second Appeal.

7 Considering the submissions made by the learned counsel for the applicant and as the applicant failed to disclose sufficient cause for more than 21 years delay in filing Second Appeal, I do not find any substance in the present Civil Application.

8. Civil Application stands rejected.

9. In view thereof registration of Second Appeal stands rejected.

10. Consequently, Civil Application No.1361 of 2015 for stay of the the Judgment and Decree passed by both the courts below stands dismissed as infructuous.

(K.K.TATED, J.)

CERTIFICATE

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