

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
CIVIL APPLICATION NO. 1378 OF 2011
IN
SECOND APPEAL (ST) NO. 21860 OF 2011**

Office Notes, Office Memoranda of Coram, appearances, Court's orders or directions and Registrar's orders	Court's or Judge's orders.
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Mr. Satyajeet P. Dighe, Advocate for Applicants.

Mr. Prashant D. Patil, Advocate for Respondent no.2

CORAM: R.G.KETKAR, J.

DATE : 24/04/2015

PC:

1. Heard Mr. Satyajeet Dighe, learned counsel for the applicants and Mr. Patil, learned counsel for respondent no.2.

2. Mr. Dighe states that respondent no.1 had expired and his legal representatives are duly served. None appears on his behalf.

3. This is an application for condonation of delay of 2 years and 203 days in filing Second Appeal. Mr. Dighe submitted that suit instituted by the respondents for partition was dismissed.

Counter claim made by applicant-defendant no.5 was decreed. He submitted that defendant no.5 had made counter claim against the plaintiff and also defendants no.1 and 2 praying for execution of sale deed in his favour. The learned District Judge allowed Appeal mainly on the ground that the counter claim was allowed by the trial Court only against defendants no.1 and 2 and as such the learned trial Judge was not justified in decreeing the counter claim. He relied upon the decision of the Apex Court in the case of Ram Natha Sao Vs. Gobardhan Sao, AIR 2002 SC 1201 to contend that the expression "sufficient cause" should receive a liberal consideration so as to advance substantial justice when no negligence or inaction or want of bonafide is imputable to party. In that case, the Apex Court held that while considering the matter the Courts should not loose sight of the fact that by not taking steps within the time

prescribed, a valuable right has accrued to the other party which should not be legally defeated by condoning delay in a routine like manner. However, by taking a pedantic and hyper-technical view of the matter, the explanation furnished should be rejected when stakes are high and/or arguable points of facts and law are involved in the case, causing enormous loss and irreparable injury to the party against whom the lis terminates either by default or inaction and defeating valuable right of such a party to have the decision on merit.

4. On the other hand, Mr. Patil submitted that the learned District Judge was fully justified in holding that the trial Court has allowed counter claim of defendant no 5 only against defendants no.1 and 2 and as such the counter claim was not maintainable. He further submitted that the suit instituted by respondent no.2 is decreed on 19.3.2015. Lastly, he submitted that this Second

Appeal will not be maintainable as the applicants have not impleaded as original plaintiffs in the Second Appeal. Mr. Dighe countered this submission by submitting that respondents 1 and 2 did not implead original plaintiffs in Appeal preferred by them before the District Court.

5. As noted earlier, the counter claim was allowed by the learned trial Judge. Prima facie, perusal of prayers made in the counter claim shows that defendant no.5 has prayed for passing decree against the plaintiffs and defendants no.1 and 2. In view thereof, prima facie, the learned District Judge was not justified in observing that the trial Court had passed decree of counter claim only against defendants no.1 and 2. In short, the Second Appeal raises arguable points, both of facts and law. In view of the decision of the Apex Court in the case of Ram Nath Sao, I am satisfied that the applicants have made out sufficient cause for condoning the delay. Hence, Civil

Application is allowed in terms of prayer clause (a) with no order as to costs. Office is directed to register Appeal, if it is otherwise ready.

(R.G.KETKAR, J.)