

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
(Civil Appellate Jurisdiction)

CIVIL APPLICATION CAS NO. 121 OF 2013
IN
REJECTED CASE NO. 2013 OF 2011
IN
SECOND APPEAL ST. NO. 5113 OF 2008

(Laxman Dhondiba Kamathe

Appellant

Versus

Kisan Ganpat Kamathe (deceased) thr.

Heirs Hirabai Kisan Kamthe & ors

Respondents)

Mr. Sanjeev P. Kadam, Advocate for appellant

Mr. S.V.Sadavarte, Advocate, for respondents.

CORAM : R.K.Deshpande, J.

DATED : 15th JUNE, 2015.

P.C.

Civil Application NO. 469 of 2008

This application seeks condonation of 211 days delay caused in filing second appeal challenging the decision of the lower appellate Court delivered on 24.07.2006. The trial Court dismissed the suit for possession of the encroached area from the defendants. The appeal was also dismissed by the lower appellate Court. The second appeal is against the concurrent findings of fact regarding encroachment.

The application for condonation of delay states in para 2 the reasons. The first is that, though the

judgment was delivered by the lower appellate Court on 24.07.2006, due to oversight mistake of the advocate in both the Courts below, the certified copy could not be applied earlier and the application was filed on 20.11.2006. The certified copy was received on 14.12.2006. The second appeal along with the application for condonation of delay was filed on 01.04.2007. It is also mentioned that besides inadvertent mistake on the part of the advocate, the applicants-original plaintiff was also not in touch with the advocate as he was not keeping good health. Thus, it is apparent that the applicant was negligent in prosecuting the matter. No case is made out for condonation of delay. The application is dismissed.

Consequently, no orders are required to be passed on Civil Application No. 121 of 2013.

(R.K.DESHPANDE, J.)

Rvjalit