

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

CIVIL APPLICATION (S) NO. 1771 OF 2011
IN
SECOND APPEAL ST. NO.33610/2011

(Kisan Khandu Walunj
vrs,
Haribhau Patilbuva Walunj since deceased thr L.Rs
1A. Smt. Deubai Haribhau Walunj and ors)

Mr. T.D.Deshmukh, Advocate for Applicant/ appellant
Mr. V.B.Nighot, Advocate, for Respondents

CORAM : R.K.Deshpande, J.
DATED : 15th JUNE, 2015.

P.C.

This application seeks condonation of delay in filing second appeal. The trial Court partly decreed the suit for partition and separate possession. Out of total 8 properties, the partition was granted only in respect of 2 properties. On appeal being preferred by the original plaintiff, the appellate Court modified the decree and granted it for the entire properties. The appellant in this second appeal is the original defendant. He has been allotted share in the partition. This appeal is preferred along with the condonation of delay which is of 4 years and 189 days.

It is not in dispute that the present appellant did not appear before the lower appellate Court to oppose the claim made in the appeal. In para 7, the averment is that the appellant tried to contact Advocate one Shri Shankar Yadav, but he could not get any response from him. It is the further averment that the

appellant was under bonafide impression that the appeal preferred by the respondent no.1 was pending. It is the case of the appellant that he came to know of the decree passed by the lower appellate Court upon receipt of the notice in execution proceedings.

The date of receipt of notice in execution proceedings is not stated in the application. It is also not stated in the application as to on what date the applicant become aware for the first time of the decision given by the lower appellate Court. The details of the counsel engaged have not been furnished. The application for condonation of delay is pending since 2011. The matter was listed on the last occasion before this Court on 12.05.2015 when the time was sought to furnish these particulars.

The particulars are not furnished, but the learned counsel for the appellant seeks further time to give particulars. In such circumstances, it is not possible to grant extension of time.

The application suffers from lack of material facts and no case is made out to seek condonation of 4 years and 189 days delay caused in filing the appeal. The application is dismissed.

(R.K.DESHPANDE, J.)