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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

CIVIL APPLICATION NO.280 OF 2014
IN
SECOND APPEAL (STAMP) NO.33244 OF 2013

Bhimbai K.Chandke & Ors.	...Applicants
V/s.	
Basavraj K.Chandke & Ors.	...Respondents

Ms.Lata Patne i/b Mr.Vinod Joshi for the Applicants.

Mr.Ashok Tajane for the Respondent No.1.

CORAM : R.D. DHANUKA, J.
DATE : 11TH DECEMBER, 2015.

P.C. :-

1. By this civil application, the applicants seeks condonation of delay of one year and 253 days in filing the second appeal.
2. The applicants were defendant nos.2 to 4 in the partition suit. It is not in dispute that the applicants had filed the written statement before the learned trial Court and had resisted the said suit. The respondent no.1 (original plaintiff) succeeded before the trial Court in R.C.S. No.65 of 2001. The said decree was challenged by the father of the applicants by filing Regular Civil Appeal No.63 of 2005. The said appeal came to be dismissed on 22th November, 2011. A perusal of the order passed by the lower appellate Court

indicates that the present applicants who were parties to the said appeal were absent when the said matter was heard and disposed of.

3. On 23rd May, 2012, the father of the applicants Kashinath S. Chandke expired.

4. The present appeal has been filed by the legal heirs of the said Kashinath S. Chandke after a delay of one year and 253 days.

5. Learned counsel appearing for the applicants invited my attention to some of the reasons recorded in the civil application. He submits that the applicants came to know about the dismissal of the appeal filed by their father only when the notices were received for amendment of mutation entries on 28th September, 2013. She submits that the applicants are illiterate and were not aware of dismissal of the appeal and therefore, they contacted the advocate. In this process, there was delay of more one year and 253 days.

6. Learned counsel appearing for the original plaintiff on the other hand opposes this application on the ground that the delay of 1 year and 253 days has not been properly explained by the applicants in the civil application. He submits that the applicants had filed the written statement before the trial Court and had resisted the suit filed by the father of the applicants. He submits that even before the lower appellate Court, though the notices were received, the applicants

chose to remain absent and did not oppose the said R.C.A. filed by their father. It is submitted that the applicants thus cannot be allowed to urge that they were not aware of the proceedings filed by their father or the out come thereof. In support of this submission, learned counsel for the original plaintiff invited my attention to the order passed by the learned appellate Court which records that the applicants herein (respondent nos.2 to 6 to the said appeal) were absent and the matter thus proceeded against them *ex-parte*.

7. A perusal of the record indicates that the applicants were parties to the trial Court proceedings and had filed the written statement and had resisted the trial Court proceedings. The applicants were absent before the lower appellate Court though served with the notices.

8. A perusal of the record indicates that there was gross delay on the part of the father of the applicants in filing the second appeal. The said Kashinath S. Chandke himself did not file appeal within the time prescribed. I am not inclined to accept the explanation rendered by the applicants in the civil application for condonation of delay that they were not aware of the out come of the order passed by the lower appellate Court or that they came to know for the first time only when the notices for amendments of mutation entries were received on 29th September, 2013. In my view, the applicants have

not explained the delay properly in the civil application. The delay of one year and 253 days thus cannot be condoned. The civil application is accordingly dismissed.

9. In view of the dismissal of the of this civil application, the second appeal is dismissed.

10. In view of dismissal of the second appeal, the civil application for stay of the impugned order passed by the lower appellate Court does not survive and is accordingly dismissed. No order as to costs.

(R.D. DHANUKA, J.)