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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

SECOND APPEAL NO. 20 OF 2016

**AVINASH PRABHAKARRAO DESHPANDE
VERSUS
INDUMATI KAMLAKARRAO DESHPANDE AND OTHERS**

**...
Advocate for Appellants : Bhadekar D.R**

...

CORAM : T.V.NALAWADE

DATE : 21/06/2016

PER COURT :-

The appeal is filed to challenge the order made in M.A.R.J.I.No.25/12 by learned Ad-hoc District Judge, Vaijapur by which, application filed for condonation of delay caused in filing First Appeal is rejected by District Court. Heard learned counsel for the appellant.

2] The appellant/original plaintiff is an advocate and must be senior, considering his age shown on the record. He had filed Suit for specific performance of so called oral agreement of sale of immovable property against his brothers in respect of house bearing

CTS No.3260. This property has come to the share of defendants. It is the case of appellant that there was oral agreement to sale this property as he wanted to create some structure by development which was to be in the name on his grand father Ramchandra Deshpande and the structure was to be used for the benefit of senior citizens. It is contended that demand draft of Rs.1 lakh was accepted by defendants but it was returned and defendants refused to execute sale deed. It is also his case that he has preferential right to purchase the property as in the past property belonged to the joint family.

3] The suit was decided on merits on 23/6/2011 and the delay of around 153 days was caused in filing the appeal. It is the case of the appellant that for about 6 months he was out of India as he went to USA and the matter was decided when he was out of India. It is contended that after returning to India, he was sick for some time and due to that the appeal was not filed within limitation. It appears that he had produced his Passport before the District Court. The District Court has held that no sufficient cause is shown.

4] For getting condonation of delay, appellant is not only expected to show that there was sufficient cause but he is expected to show that there is some case to argue in the appeal. The aforesaid contentions with regard to the merits of the case of the plaintiffs, show that there is no case at all on merits in the suit. He

filed suit in the year 2008 against his brothers and he virtually blocked the property and prevented them from making transactions in respect of their separate property. In view of these circumstances, and as the matter was decided only on the basis of oral evidence, there was no scope in the appeal to the present appellant. Thus on merits, there is virtually no arguable case to the present appellant in the First Appeal and this circumstance also could have been considered by the District Court.

5] When the Court is vested with discretionary power and it has refused to use discretion in favour of the appellant, appellate Courts are ordinarily not expected to interfere in such order. In view of these circumstances, this Court holds that nothing can be achieved by issuing notice and admitting the appeal. No substantial question of law as such is involved in the matter. It is purely question of fact. Learned counsel for the appellant submitted that the grounds mentioned in the appeal memo could have been considered for ascertaining as to whether some arguable case is made out. This Court has gone through those grounds also. Even after going through these grounds, this Court holds that there is virtually nothing in favour of the plaintiff which can be said as arguable. Appeal is dismissed.

(T.V.NALAWADE,J.)

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