

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

**SECOND APPEAL (ST.) NO.4164 OF 2016
along with
CIVIL APPLICATION NO.1340 OF 2016**

Namdev Chendu Shelke .. Appellant/Applicant
Vs.
Parsharam Karbari Shelke & Ors. .. Respondents

Mr.S.P. Dighe for the Appellant/Applicant.
Mr.S.M.Sabrad for the Respondent nos.1, 4 & 5.

CORAM : R.D. DHANUKA, J.
DATE : 23rd November 2016

P.C.

. Not on board. Taken on board by consent of the parties.

2. Admit on the following substantial question of law :-

(i) Whether the finding of the first appellate Court refusing to condone the delay of 36 days in filing the appeal is perverse ?

3. By consent of the parties, second appeal is heard finally at the admission stage.

4. By this second appeal, the appellant has impugned the order dated 29th September 2015 passed by the learned Ad-hoc District Judge-1, Niphad dismissing the application filed by the appellant inter alia praying for condonation of delay of 36 days in filing the appeal.

5. I have heard the learned counsel appearing for the parties and have perused the order dated 29th September 2015 passed by the learned Ad-hoc District Judge-1, Niphad. Delay of 36 days in filing the appeal is opposed by the learned counsel for the respondent nos.1, 4 & 5 on the ground that delay was not properly explained by the appellant before the first appellate Court and has thus rightly been not condoned by the learned Ad-hoc District Judge-1, Niphad.

6. A perusal of the order dated 29th September 2015 passed by the learned Ad-hoc District Judge-1, Niphad indicates that the learned Judge has considered the past conduct of the appellant before the learned trial Judge while considering the application for condonation of delay. The impugned order passed by the learned Ad-hoc District Judge-1, Niphad thus deserves to be set aside. Delay of 36 days in filing the appeal is condoned. Civil Misc. Application No.24 of 2015 inter alia praying for condonation of delay is allowed. No order as to costs.

7. In so far as the substantial question of law formulated by this Court is concerned, for the reasons recorded aforesaid, the substantial question of law is answered in affirmative.

8. Second Appeal (St.) No.4164 of 2016 is allowed in aforesaid terms. The impugned order dated 29th September 2015 passed by the learned Ad-hoc District Judge-1, Niphad is set aside. The learned trial Judge shall hear the appeal filed by the appellant on merits without being influenced by the observations made in the impugned order dated 29th September 2015.

9. In view of the disposal of the second appeal, the civil application does not survive and is accordingly disposed of. No order as to costs.

R.D. DHANUKA, J.