

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

***CIVIL APPLICATION NO.1134 OF 2015
IN
SECOND APPEAL (STAMP) NO.5964 OF 2015***

Shankar Ramrao Surve .. Applicant
Vs.
Dhonduramrao Surve .. Respondent

Mr.K.P.Shah for applicant.
Mr.M.M. Aagavekar for respondent.

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

P.C.

. By this civil application, the applicant seeks condonation of delay of 3 years and 64 days in filing the second appeal.

2. The applicant has stated in the civil application that the applicant has been residing in Mumbai for past several years and was represented in the proceedings before the lower appellate Court through his advocate. Learned advocate did not inform him about the order passed by the learned District Judge. The applicant is an aged person about 83 years old and could not keep a track of the proceedings. The applicant came to know only recently when he made enquiry with his advocate. The applicant thereafter had to collect all papers and proceedings from his advocate and handover the same to his advocate in Mumbai for filing the second appeal. It is stated that the delay is neither intentional nor deliberate but has been caused due to various reasons which were beyond his control.

3. The respondent has filed an affidavit on 25th June 2016 opposing the civil application on the ground that the applicant has not explained the delay properly in the civil application and thus the delay shall not be condoned by this Court.

4. The next objection of the learned counsel for the respondent is that though the applicant was not granted any liberty to file any additional affidavit, the applicant has filed an additional affidavit thereby enclosing some of the medical records and improving his case in the additional affidavit which cannot be permitted. In support of this submission, learned counsel placed reliance on the judgment of the Supreme Court in the case of ***Esha Bhattacharjee Vs. Managing Committee of Raghunathpur Nafar Academy & Ors.***, reported in (2013) 12 SCC 649. It is submitted that the application for condonation of delay should be drafted with careful concern and not in a haphazard manner.

5. Learned counsel appearing for the applicant in rejoinder submits that the applicant was not keeping good health and his wife is 80 years old and she is also not keeping good health. He submits that large number of documents is annexed to the additional affidavit showing the treatment taken by the applicant from several Doctors. He submits that the suit is for partition and if the delay is not condoned, great hardship would be caused to the applicant. He submits that the applicant may be directed to pay reasonable costs to avoid the hardship, if any, caused to the respondent.

6. It is the case of the applicant that he has been residing in Mumbai for past several years and his advocate did not inform him about the order passed by the District Judge. It is stated that the applicant is an aged person and could not keep a track of the proceedings. It is not in dispute that the ground of sickness was not mentioned in the civil application but has been brought on record by filing additional affidavit along with several medical documents in support of the contention that the applicant has been suffering from various diseases and has been taking treatment from several Doctors. There is no dispute that the suit is for partition. There is also no dispute that the applicant is now 84 years old.

7. A perusal of the reasons recorded in the civil application and in the additional affidavit along with large number of medical documents in support of the submission that the applicant was suffering from various diseases and was taking treatment indicates that the applicant has explained the delay in filing the second appeal. However, the delay caused is substantial. In my view, interest of justice would be met with if the applicant pays costs of Rs.10,000/- within two weeks from today. There is no dispute with the proposition of law laid down by the Supreme Court in the case of ***Esha Bhattacharjee Vs. Managing Committee of Raghunathpur Nafar Academy & Ors.(supra)***.

8. Civil application is made absolute in terms of prayer clause (a). Delay is condoned on the condition of payment of Rs.10,000/- which shall be paid to the respondent within two weeks from today. The applicant is directed to remove all other office objections within two

weeks from today, failing which, the second appeal shall stand dismissed without further reference to the Court. Civil application is disposed of in aforesaid terms.

R.D. DHANUKA, J.