

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

CIVIL APPLICATION NO.636 OF 2014
IN
FIRST APPEAL st. NO.13757 OF 2013

Shri Rangnath Dattatraya Dhere ... Applicant

Vs.

Shri Mohan Maruti Gulambe ... Respondent

Mr.P.D. Pise for the Applicant
Mr.S.S. Redekar for Respondent

CORAM: **MRS.MRIDULA BHATKAR, J.**

DATE: **6th JANUARY, 2016**

P.C.:

1. The application is moved for condonation of delay of 10 years and 266 days in filing this appeal. The learned Counsel for the applicant submits that it was a money recovery summary suit No.914 of 2002 filed before the City Civil Court and the judgment and decree was passed on 25.6.2002. He submits that the summons of the summary suit was never served on the appellants and the suit was decided ex-parte. Only after the warrant was issued in the execution proceedings, that the appellant came to know about the institution of the suit and the decision of the suit. Hence, he filed this appeal.

2. The learned Counsel for the applicant submits that the applicant is a poor farmer and has no money. He submits that he is defending the execution proceedings before the trial Court. He also submits that the advocate, who was given instructions to appear in the matter, did not take appropriate steps and so the appellant has taken the action against the concerned advocate and has disclosed his name also.

3. The learned Counsel for the respondent opposes the application and submits that this Court has granted conditional stay to the impugned judgment and decree and directed the appellant to deposit the decretal amount and thus, there is no stay. However, the executing Court did not proceed with the matter under the impression that the High Court has granted stay to the impugned judgment and decree.

4. In view of the submissions made by the learned Counsel for the applicant and the for the reasons given therein, as the suit was decided ex-parte, without proper service on the applicant, the delay of 10 years and 266 days is hereby condoned, subject to the applicant paying costs of Rs.5,000/- to the respondent before 27th January, 2016. If the costs are not paid, the appeal shall stand dismissed without reference to Court.

5. Subject to the said payment of costs, the appeal be registered and listed after 27th January, 2016 for admission after verifying the fact of payment.
6. Civil Application stands disposed of accordingly.

(MRIDULA BHATKAR, J.)