

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

CIVIL APPLICATION NO. 1202 OF 2016

IN

SECOND APPEAL (ST) NO. 13137 OF 2016

Saifansha Muluksha Fakir (Makandar)

Since deceased through LRs

..... Applicants

VERSUS

Sujatabi Badesha Fakir & Ors.

..... Respondents

Mr.Ashok Tajane for the Applicants.

Ms.Shruti Tulpule for the Respondent no.1.

CORAM : R.D. DHANUKA, J.

DATE : 30th NOVEMBER, 2016

P.C.

By this civil application, the applicants seek condonation of delay of 3 years and 8 months in filing second appeal.

2. Learned counsel appearing for the applicants states that though the applicants were necessary party to the partition suit, the applicants were not impleaded as party to the said suit. The predecessors of the applicant was impleaded as party defendant no.1. The applicants was impleaded for the first time at the stage of final decree.

3. Learned counsel appearing for the applicants submits that within the date of the knowledge of the decree passed which was derived by the applicants when the applicants were served with the summons, the applicants have taken steps promptly to file second appeal and in this procedure, there is delay of 3 years and 8 months in filing second appeal.

4. The application for condonation of delay is vehemently opposed by the respondent no.1 (original plaintiffs) on the ground that the impugned judgment and decree passed on 28th February, 2012. The predecessor of the applicants has expired on 11th November, 2014. She submits that even for more than two years, the predecessor of the applicants did not file any second appeal. She submits that the delay is not properly explained.

5. It is not in dispute that the applicants were not impleaded as party to the partition suit. Whether impleadment of the applicants was necessary or not, I do not propose to go into the issue in this civil application at this stage. In my view delay is not fully and satisfactorily explained. A perusal of the record indicates that from the date of the alleged knowledge of the applicants, the applicants have filed second appeal.

6. In my view interest of justice would be met with if delay of 3 years and 8 months in filing second appeal is condoned upon payment of exemplary cost.

7. Mr.Tajane, learned counsel for the applicants submits that his client can be directed to pay the reasonable amount of cost and delay may be condoned. I, therefore, pass the following order :-

Civil application is made absolute in terms of prayer clause (a) on the condition that the applicants pay a cost of Rs.25,000/- to the respondents within two weeks from today. The applicants are directed to remove all office objections within two weeks from today.

8. Place the second appeal on board for admission on **17th January, 2017** subject to numbering.

(R.D.DHANUKA, J.)