

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

SECOND APPEAL (ST) NO. 13173 OF 2016

Tukaram Dhuraji Jagtap

..... Appellant

Versus

Mrs. Varsharani Devendra Ballal
& Ors.

..... Respondents

G. S. Godbole a/w Akshay Petkar I/b Sudhir Somalwar, for
Appellant
Ms. Lalita Panchakshari, for Respondents

***CORAM : N. M. Jamdar J.
Wednesday 20 July, 2016***

ORAL ORDER

. The appellant/objector challenges the Judgment and Order passed by the District Judge, Pune in Civil Appeal No. 364/16 and the order passed by the Civil Judge, Junior Division, Pune in Regular Darkhast No. 202/2009. The application filed by the appellant objecting to the execution of the decree and the Appeal were dismissed.

2. The respondents/plaintiffs filed a Regular Civil Suit No. 871/2006 for possession of the suit property from the Judgment Debtor. Suit was decreed on 30 September, 2009. The appeal was dismissed by the District Court in the year 2010 and the Second Appeal was dismissed in 2011. Thereafter when the decree was put in execution, the appellant has sought to obstruct the execution of the decree.

3. The learned Counsel for the appellant submitted that the basis of the impugned order that the suit and appeal filed by the appellant asserting his independent right in respect of suit property have been dismissed and that proceeding has attained finality, is not correct. He submitted that after the suit filed by the appellant was dismissed, the Writ Petition was filed in this Court, was not dismissed on merits, but liberty was given to the appellant to file an appeal, which appeal is filed and is pending.

4. This position will not take the case of the appellant any further. The appellant who is closed relative of the Judgment Debtor, was fully aware of the proceedings. In the suit filed by the Judgment Debtor for specific performance, the appellant was one of the witness. He never claimed any right in the suit property. It is only when all proceedings taken by the Judgment Debtor were concluded that he filed the suit asserting his right. This suit was dismissed. In the Writ Petition, this Court granted liberty to file the

appeal on a condition that if the appeal is filed within six weeks the delay will be favourably considered for condonation. The appellant filed the appeal after a year. Both the Courts have considered the case of the Appellant on merits and found no substance.

5. The entire conduct of the appellant is to defeat the execution of the decree. Both the Courts have rightly rejected the claim of the appellant. The learned Counsel for the appellant submitted that the appeal filed by the appellant in the District Court, in which delay is now condoned be considered on its own merits.

6. No question of law, much less a substantial question of law arises. Second Appeal is dismissed. The interim order stands vacated. The appeal filed by the appellant will be considered on its own merits.

(N. M. Jamdar, J.)