

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

***SECOND APPEAL NO. 760 OF 2015
ALONG WITH
CIVIL APPLICATION NO. 1211 OF 2015***

Dr.Sudhir B. Mhatre,
At- Sai Diagnostic Centre,
Nr. Parsik Janta Sahakari Bank,
Tatwagyan Vidyapith Chowk,
Kapurbawadi, Thane – 400 604. ... Appellant/Applicant

v/s

Dr.Jignesh Gokuldas Thakkar,
03/B, Om Sai Shraddha, Shastri Nagar,
Opp. Shrishti Tower, Kalwa, Thane. ... Respondent

Ms.Tanaya Goswami i/by Sudam Kale for the appellant/applicant.

Ms.Anita Bhaktwani for Resp. No.1.

CORAM: N.M. JAMDAR, J.

DATED : 1 APRIL 2016

ORAL ORDER:

By this appeal, the Appellant challenges the order passed by the District Judge, Thane, dismissing the Civil Miscellaneous Application No.364 of 2014 taken out for condonation of delay of 556 days' in filing the appeal.

2 The Appellant initially filed a writ petition in this Court which

was disposed of on the basis of the decision of the Apex Court in the case of *Shyam Sunder Sarma v/s Pannalal Jaiswal*¹, holding that the second appeal would be maintainable.

3 The Respondent filed a Summary Suit No.35 of 2010 in the Court of Civil Judge, senior Division, Thane, for recovery of Rs.4,98,000/- along with interest. In this suit, conditional leave to defend was granted subject to the Appellant furnishing security of Rs.5,00,000/-. The Appellant did not furnish security nor filed written statement and the suit was decreed. Thereafter, he filed an appeal in the District Court wherein he took out the application for condonation of delay. Delay was of 580 days which was sought to be explained on the ground that the Appellant was suffering from spondylitis and that he was not aware of the proceedings. The learned District Judge took note of the entire conduct of the Appellant and that the Appellant was aware of the proceedings and found that no cause for condonation of delay is made out.

4 Learned counsel for the Appellant reiterated the submissions made before the District Court. She submitted that the Appellant was suffering from spondylitis and was also not aware of the proceedings. This submission cannot be accepted. The proceedings were a summary suit. A conditional leave to defend on furnishing security of Rs.5,00,000/- was granted, which the Appellant did not pay neither he filed any written statement. Learned counsel for the Respondent pointed out that the roznama would show that the

1 A.I.R. 2005 SC 226.

Appellant was very much aware of the proceedings. The health reason given cannot explain the delay for a period of 580 days. The appellant is a doctor and he is fully aware of the proceedings. It is clear that Appellant is somehow avoiding to pay the amount to the Respondent. There is no error or perversity in exercise of discretion of the learned District Judge.

5 No substantial question of law arises.

6 The second appeal and civil application are accordingly dismissed.

(N. M. JAMDAR, J.)