

Sequeira

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

*CIVIL APPLICATION NO. 758 OF 2014
In
SECOND APPEAL (St.) NO. 25686 OF 2013
Along with
CIVIL APPLICATION NO. 759 OF 2014*

Anantrao Sitaram Gaikwad. ... Applicant /Appellant
V/s.
Arjun Rangnath Bhosure & ors. ... Respondents.

Ms.Leena Patil, for the Applicant / Appellant.
Mr.Ravi Shinde a/w Sujal Gangal i/b Mr.S.M.Gorwadkar, for
Respondent Nos.3 & 4.

***CORAM : N.M.Jamdar, J.
Friday, 22 July 2016.***

P.C. :-

By this Application the Applicant seeks to condone the delay of 9 years and 312 days i.e almost 10 years in filing the Second Appeal.

2 The Respondent filed a suit for specific performance which was decreed on 25 January 1996. The Appeal filed by the Respondent in the District Court was dismissed, on 28 July 2003. Second Appeal with the Application was filed in September 2013. In the Application the cause made out is only in one paragraph.

'7. The Applicant says and submits that aggrieved by the above mentioned Judgment and Order passed by the Additional District Judge, Pune, the present Applicant has filed the Second Appeal in this Hon'ble High Court. The Applicant says and submits that the Applicant has a very good case on merit and the Applicant will succeed in the above Second Appeal. The Applicant says and submits that after the above mentioned order came to be passed by the Hon'ble District Judge the present Applicant was not advised by his Advocate to file Second Appeal, it was only when the Respondents No.1 to 4 filed execution Application and an order in respect to that came to be passed on 20.6.2013 that the present Applicant was advised to file the Second Appeal for challenging the Judgment and Decree passed by the Additional District Judge Pune and hence there is a delay in filing the present Second Appeal. The Applicant says and submits that the delay in filing the above Second Appeal is neither intentional nor deliberate but the same has been caused due to extra ordinary circumstances beyond the control of the present Applicant. The Applicant says and submits that the Applicant has a very good case on merits and he has confidence to succeed in the above mentioned Second Appeal and hence it is just and necessary and in the interest of justice that the delay caused in filing of the above Second Appeal be condoned.'

3. The perusal of the reason stated above, on the face of it shows that it is entirely unsatisfactory for condonation of gross delay of 10 years. The Appellant had filed first a appeal in the District Court through an advocate and it is impossible to believe that the Appellant was not advised by his advocate to file the Second Appeal. This is the only ground given in the Application. In view of this gross delay substantive rights have accrued to the Respondent which cannot be

taken lightly away by entertaining the Appeal and by condoning the delay. In the circumstances, the Civil Application cannot be entertained and is rejected. Consequently, Second Appeal and Civil Application No.759 of 2014 do not survive and are dismissed.

(N.M.Jamdar, J.)