

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

***SECOND APPEAL NO. 38 OF 2015
ALONG WITH
CIVIL APPLICATION NO. 82 OF 2015***

Shri Bhausahab Tatyaba Sutar,
R/o At Post: Nira Wagaj,
Tal. Baramati, Dist. Pune.

... Appellant/applicant

v/s

Shri Shankar Vishnu Sutar
(since deceased, through heirs)

1 A. Shri Ashok Shankar Sutar & ors. ... Respondents

Mr.Kisan Sonwalkar for the appellant/applicant.

Mr.Sagar Joshi for Resp. Nos.1 a to 1 E.

Coram: N.M. Jamdar, J.

Dated: 21 July, 2016

ORAL ORDER:

Heard learned counsel for the parties.

2 Notice was issued on 27 March 2015 for final disposal of the appeal.

3 Taken up for consideration on the following substantial question of law :

'Whether the learned District Judge has judiciously exercised the discretion to dismiss the application for condonation of delay of 116 days, filed by the Appellant. '

4 The Respondent filed Civil Suit No.153 of 2005 for recovery of possession of the suit property. The suit was decreed by the judgment and order dated 8 August 2012. Thereafter the Appellant filed a civil appeal in the District Court at Baramati. In this appeal, the Civil Misc. Application No.21 of 2013 for condonation of delay was filed on 4 October 2013. It was stated in the application that the delay was of 116 days which is required to be condoned. The learned District Judge, by the impugned order dated 10 October 2014, rejected the application for condonation of delay and subsequently the appeal stood dismissed.

5 Heard learned counsel for the parties.

6 Learned counsel for the Appellant submitted that the reason given in the application was sufficient enough and the delay was not of inordinate nature. The learned counsel for the Respondents submitted that the delay is not of 116 days but of 130 days and the reason given in the application is not adequate.

7 The Appellant is 80 years' old. Decree of possession from the

suit premises is passed against the Appellant. The Appellant has given reason in the application for condonation of delay that due to his old age it was not possible for him to continuously keep in touch with his advocate. It was also stated that there was talk of settlement. I have gone through the application. The appellant is of advanced age. The decree for possession was in respect of part of some property and the settlement talks as stated were regarding exchange of the other part. Though the learned counsel for the Respondent submits that the settlement talks never took place, the question whether the reason stated in the application would be stated to be a impossible one. Even assuming the delay is of 130 days, it is not of inordinate nature. The reason stated therein cannot be stated to be a impossible one. There has to be distinction between delay of inordinate nature and the delay of small duration, for which different approach is required. While dealing with the applications for condonation of delay, allowing the application or dismissing the same, are not the only options. The learned District Judge could have put the Appellant to terms but none of these options have been explored. Therefore, the impugned order passed suffers from an illegality and the question of law framed will have to be answered in favour of the Appellant.

8 Accordingly, the second appeal is allowed. The impugned order dated 10 October 2014 dismissing the Misc. Civil Application No.21 of 2013 is quashed and set aside. Misc. Civil Application

No.21 of 2013 is allowed, subject to the Applicant paying cost of Rs.10,000/- to the Respondent within a period of four weeks, to be deposited in the appeal Court, which the Respondent will be entitled to withdraw. The appeal filed by the Appellant stand restored to file, to be disposed of as per law. All contentions of the parties are kept open.

9 In view of disposal of the appeal from order, the civil application does not survive and is disposed of.

10 The Registry to communicate the order to the learned District Court, Baramati.

11 Parties will appear before the learned District Judge, Baramati, on 25 August 2016.

(N. M. Jamdar, J.)