

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

**SECOND APPEAL NO.291 OF 2016
WITH
CIVIL APPLICATION NO.547 OF 2016**

Shri Anand Vitthal Patange ... Appellant
Versus
Sou. Padma Nitin Pore And Others ... Respondents
.....
Mr. Nagesh Chavan for the Appellant.
Mr. Prajakt M. Arjunwadkar for Respondent Nos.2 to 4.
.....

CORAM : S.C.GUPTE, J.

DATE : 19 JANUARY 2017

P.C. :

. Heard learned Counsel for the parties.

2 This second appeal challenges the judgment and order passed by the District Judge, Sangli in Misc. Civil Application No.12 of 2014. The Misc. Civil Application was for condonation of delay in filing the appeal before the District Court. By refusing to condone the delay, the District Court rejected the Appellant's appeal from a judgment and decree passed by the CJJD, Sangli decreeing partially the Respondents' suit. The impugned order and judgment of the District Court properly deals with the Appellant's application for condonation of delay. There is a finding of the First Appellate Court that the writ of summons in the suit was duly served on the Appellant (original Defendant No.1), but he remained absent and an

ex-parte decree came to be passed against him. This finding is not contested by the Appellant in the present second appeal. The First Appellate Court after considering the various judgments cited by the Appellant in support of his application for condonation of delay, noted that there was no sufficient cause shown by the Appellant requiring condonation of delay and that the ratio of the judgments cited before it had no application to the facts of the Appellant's case. Appellant's application for condonation of delay made to the District Court does not disclose any single reason for the delay of over two years, one month and 13 days (said to be 1 year, 11 months and 19 days in the delay condonation application). In the premises, the conclusion drawn by the First Appellate Court cannot be said to be vitiated by any error of law. No substantial question of law arises in the second appeal in the premises.

3 Learned Counsel for the Appellant relied upon the judgment of this Court in the case of **Kailas Dinkar Wani Vs. Agrasen Urban Co-operative Credit Society Ltd.**¹ Considering the factual matrix of the case before it, this Court in the case of **Kailas Wani** (supra) held that in every case of delay, there can be some lapse on the part of the litigant concerned, but that alone is not enough to turn down his plea for condonation of delay. The Court held that if the explanation does not smack of mala fides or it is not put-forth as part of a dilatory strategy, the Court must show utmost consideration by adopting a liberal approach. In the case before the Court, there was an explanation offered for the delay and as noted by the Court, it did not smack of mala fides, but that this explanation was not considered in a proper perspective by the Court below. In the present case, as I have

1 2011(2) Mh. L.J. 603

noted above, there is absolutely no explanation for the long delay, save and except a bald statement that the suit was decreed ex-parte against the Appellant. If the service of the writ of summons is not disputed, the fact that the suit was decreed ex-parte is by itself no explanation for any delay in filing an appeal

4 There is, thus, no merit in the second appeal and the same is dismissed.

5 In view of the dismissal of the second appeal, Civil Application No.547 of 2016 does not survive and the same is also dismissed.

(S.C. GUPTE, J.)