

Rane (sr.2)

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
Civil Application in SA NO. 479 OF 2016
IN
Second Appeal (ST) NO. 3609 OF 2016**

Chaugonda Bapu Birnale

...Applicant

Versus

Shripati Appa Savale And Ors.

...Respondents

None for the Applicant.

Ms. Manjiri Parasnis, Advocate for Respondents no.1, 2, 4, 5 and 6.

CORAM: N.M. JAMDAR, J.

DATED: 28th April, 2017.

PC:-

. This Application is kept for dismissal. Board is notified in advance. None appears for the Applicant when the matter is called out.

2. The delay in filing the Second Appeal is of 9 years and 200 days.

3. The Applicant is the original plaintiff who filed a Regular Civil Suit seeking possession of the suit property from the Respondent, plaintiff. The suit was decreed by the Learned Civil Judge. Thereafter, Regular Civil

Appeal No. 469 of 1997 was filed by the Respondent. The Learned District Judge by judgment and order dated 19 April, 2006 came to the conclusion that the Applicant had failed to prove that he is the owner of the suit property and accordingly dismissed the Appeal.

4. In the Civil Application taken out for condonation of delay, almost entire Application is devoted to the challenge to the judgment and decree on merits. As far as delay of 9 years, which is gross on the face of it, is explained only in one paragraph stating that since the Advocate expired in the year 2009, the Appeal could not be filed in time. Even after the Advocate expired, there is a gross delay. Between 2006 to 2009 what transpired is also not satisfactorily explained. General averments regarding old age and medical symptoms such as breathlessness have been stated.

5. None of the reasons on the face of it can be considered as cogent reasons. Reply Affidavit has been filed where the Application has been contested on merits. In the reply, which is reiterated by the Learned Counsel for the Respondents, it is pointed out that the Applicant was only 53 year old when the decree was passed and that there is not even any document produced regarding treatment for breathlessness.

6. Such delay of 9 years and 200 days, that is, almost 10 years on such casual reasons cannot be condoned. The Civil Application is accordingly rejected.

(N.M. JAMDAR,J.)