

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

**CIVIL APPLICATION NO. 603 OF 2016
IN
SECOND APPEAL (ST) NO. 7605 OF 2016**

Mr.Subhash Shankar Gavade ...Appellant/Applicant

vs.

Mr.Sampat Shankar Gavade & Ors. ...Respondents

Mr.P.S. Gole for Applicant.

Mr.V.R. Gaikwad for Respondent No.1.

CORAM : S.C. GUPTE, J.

18 JANUARY 2017

P.C. :

Heard learned Counsel for the parties.

2 This civil application seeks condonation of delay of 2 years and 317 days in filing the present second appeal. The reasons are set out by the Applicant in this civil application. It is submitted that the judgment and decree was passed on 26 November 2012 but that around the time, since about June 2012, the Applicant was suffering from serious ailments such as hypertension and brain haemorrhage (paralysis) leading to loss of memory. The Applicant has produced record to show that he was under medical treatment of Dr.Prakash Sawant at KEM Hospital, Parel, Mumbai. The Applicant states that on 31 May 2013, he had lost his memory and was admitted to KEM Hospital in an emergency. The medical papers of KEM Hospital, Parel are produced with the civil application. The papers also show that there was a brain scan performed on the Applicant on 11 May 2013 at KEM Hospital. Under these circumstances, it is claimed that the Applicant learnt about the judgment and decree of the first Appellate Court when he

received a notice from the executing court for partition of the suit property.

3 In reply, it is submitted by learned Counsel for the Respondents that the Applicant has not come to the court with clean hands. It is submitted that the Applicant has attended proceedings in the same court where the execution proceeding of the Respondent in respect of the impugned judgment and decree has been pending. Learned Counsel relies on Roznama of the other proceedings in this behalf. The Roznama does show that on one particular date during the relevant period, i.e. on 19 January 2013, the Applicant was present along with his Advocate in that court. However, barring this solitary instance, the veracity of which cannot be gone into by this court at this stage, there have been prior and subsequent dates on which the Applicant is actually shown as absent.

4 Be that as it may, this court is not expected to conduct a full-fledged inquiry into the veracity of the Applicant's case explaining the delay caused in filing the second appeal, by allowing the parties to conduct a trial by leading of evidence. Instead, interests of justice will be adequately served, if the delay is condoned subject to payment of costs.

5 Accordingly, the civil application is allowed in terms of prayer clause (a) subject to payment of costs quantified at Rs.25,000/- by the Applicant to the Respondents. The costs shall be paid to the Respondent in one set. Payment of costs to be condition precedent.

6 The second appeal to come up for admission on 24 January 2017.

(S.C. Gupte, J.)