

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
SECOND APPEAL NO.263 OF 2017

Shri. Sitaram Tulshiram Deokar (Mali) & ...Appellants
Ors. (all Thr. Poa Shri. Balchandra
Sitaram Deokar)

Versus

Shri. Krushan Rajaram Deokar (Mali) ...Respondents
(dead Thr. Lrs.)

Mr. Ajay Joshi for the Appellants.

Mr. Sarang S. Aradhye for the Respondents.

CORAM : A. A. SAYED, J.

DATE : 8 NOVEMBER, 2017

P. C.:

1. The Second Appeal challenges an order dated 27th February 2015 passed by the District Court in Civil Misc. Application for condonation of delay of 249 days in preferring the First Appeal against decree passed in Regular Civil Suit No.37 of 2009 dated 29th February 2014.

3. Learned Counsel for the Appellants has pointed out paragraph 6 of the impugned order, which reads as under:

“If the principle laid down by the above pronouncement is made applicable to the case in hand, it would crystal clear that the applicants have just asked for the condonation of delay on the ground that applicant was not aware of decision arrived at in said suit. The Applicant also accuses his counsel for not informing the decision arrived at. The approach of applicants seem to be quite casual. They are not precluded from proving the said ground to the satisfaction of the court. On the contrary, the courts are more cautious than the contesting matters. Sufficient cause has to be considered with pragmatism and with justice oriented approach, but any cause whatsoever cannot be construed as a sufficient cause and it is necessary to apply the mind to the cause shown and to justify the said causes and to find out whether there are sufficient or not. I am conscious that expression “sufficient cause” is liberally construed, it does not mean that the court should readily accept whatever the party has to explain his default.”

4. The learned Counsel for the Appellant submitted that the just Appellate Court has wrongly stated the ground on which the condonation of delay was sought. It is pointed out that no such

ground that the Appellants were unaware of the decision arrived at in the suit nor any accusations were made against the counsel for not informing the decision arrived at was averred in the Application for condonation of delay. It is pointed out that the Applicant No.1 was unwell and Applicant No.2 was taking care of the Applicant No.1 and the Applicant Nos.3 and 4 are labourers and were not staying in the village at the relevant time. Learned counsel for the Respondents has vehemently opposed the Appeal and submitted that the Appellants have been negligent.

5. It is noticed that the suit is a partition suit. Considering the facts and circumstances of the case, I am of the view that the sufficient cause has been made out to condone the delay, subject however to costs. Hence, the following order:-

ORDER

- (a) The Second Appeal is allowed;
- (b) The impugned order dated 27th February 2015 is set aside subject to costs of Rs.3000/- to be paid by the Appellants to the Respondents within a period of three weeks from today.

(c) Subject to the above, the delay in filing the First Appeal shall stand condoned

[A. A. SAYED, J.]