

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

**SECOND APPEAL NO.781 OF 2016
WITH
CIVIL APPLICATION NO.1370 OF 2016
IN
SECOND APPEAL NO.781 OF 2016**

Dhundappa Gurulingappa Durunkar

...Appellant

vs.

Arun Vitthal Mane And Anr.

...Respondents

....

Mr. P.B. Kulkarni, for the Appellant.

Ms. Geeta Mulekar, for the Respondents.

.....

CORAM : S.C. GUPTE, J.

DATED : 17 JANUARY 2017

P.C. :

. Heard learned Counsel for the parties.

2. This appeal challenges an order and judgment dated 11 August 2016 passed by the 3rd Adhoc District Judge, Solapur in Civil Miscellaneous Application No.7 of 2016, confirming the judgment and order dated 7 February 2014 passed by the 7th Civil Judge, Junior Division, Solapur in Regular Civil Suit No.264 of 2013. The Miscellaneous Civil Application of the Appellant was for condonation of delay of 662 days in filing the appeal.

3. The Miscellaneous Application was rejected by the learned

District Judge after setting out cogent reasons. It was noticed by the learned District Judge that the Appellant was very much in the knowledge of the judgment and order of the Trial Court. He had appeared from time to time in the execution proceedings filed by the Respondent for execution of the judgment and order of the Trial Court. Learned Counsel for the Respondent has submitted for perusal of this Court a roznama of the execution proceedings. The roznama shows that the notice of the execution application was served on the Appellant on 28 October 2014. The Appellant appeared thereafter before the executing court. The Appellant filed his vakalatnama before the executing court on 24 November 2014 and had also applied for time. He, thereafter, appeared on a number of occasions and applied for further time. The Appellant was allowed by the first Appellate Court to lead evidence for explanation of the delay. He filed his affidavit in lieu of examination-in-chief. In his cross-examination the Appellant accepted that he had approached his lawyer regarding the pending suit before the Trial Court and that he was informed of the decree of the trial court on 7 February 2014. He even asked for a copy of the judgment and order, which was furnished and also read out to him. He also confirmed that he had no grievance against his Advocate for not having filed the appeal in time. On this evidence, the learned District Judge held that there was no cause made out explaining the delay of 662 days (the appeal having been filed on 5 January 2016) and, accordingly, dismissed the Civil Miscellaneous Application of the Appellant. No substantial question of law arises from this decision.

4. Learned Counsel for the Appellant requests the Court to take

a lenient view and allow his appeal after imposing costs. It is not possible to entertain such plea, when the Second Appeal does not give rise to any substantial question of law.

5. The appeal is, accordingly, dismissed. No order as to costs.

6. In view of the dismissal of the Second Appeal, the Civil Application does not survive and the same is also disposed of.

(S.C. GUPTE, J.)