

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
CIVIL REVISION APPLICATION NO.825 OF 2013

Eknath Dattatrya Patil ... Applicant
Vs.
Rukaminibai Namdev Mhatre and another ... Respondents

Mr. Hemant S. Deshpande for Applicant.
Mr. S. V. Gavand for Respondent No.1.

CORAM : R. G. KETKAR, J.
DATE : MARCH 21, 2017

P.C. :

Heard Mr. Deshpande, learned Counsel for applicant and
Mr. Gavand, learned Counsel for respondent No.1 at length.

2. By this Application under Section 115 of the Code of Civil Procedure, 1908, applicant has challenged the judgment and order dated 06.08.2013 passed by the learned District Judge-3, Raigad-Alibag in Civil Miscellaneous Application No.145 of 2011. By that order, the learned District Judge rejected the application made by the applicant for condoning the delay in filing the substantive appeal under Section 96 of C.P.C. challenging the judgment and decree dated 10.05.2010 passed by the learned trial Judge in Regular Civil Suit No.162 of 2007. Section 115(1) of C.P.C. reads thus,

115. Revision.- (1) The High Court may call for the record of any case which has been decided by any Court Subordinate to such High Court and in which no appeal lies thereto, and if such subordinate Court appears-

- (a) to have exercised a jurisdiction not vested in it by law, or
- (b) to have failed to exercise a jurisdiction so vested, or
- (c) to have acted in the exercise of its jurisdiction illegally or with material irregularity,

the High Court may make such order in the case as it thinks fit.”

3. Perusal of the above extracted provision shows that C.R.A. will lie to the High Court where no appeal lies. In the case of ***Shyam Sunder Sarma vs. Pannalal Jaiswal and others***, AIR 2005 SC 226, the Apex Court considered earlier decision in ***Sheodan Singh vs. Daryao Kunwar***, AIR 1966 SC 1332 and held that an appeal when dismissed on refusal to condone delay is nevertheless a decision in the appeal and amounts to a decree.

4. In view thereof, applicant has an equally efficacious, alternate, statutory remedy of filing substantive Second Appeal under Section 100 of C.P.C. In view thereof, C.R.A. is disposed as not maintainable reserving liberty to the applicant to prefer Second Appeal challenging the impugned order. The time spent by the applicant in prosecuting the C.R.A. from 03.10.2013 till date shall be excluded while considering the application for condonation of delay in filing the Second Appeal. Office is directed to return the certified copies to the applicant forthwith. It is made clear that I have not gone into the merits of the case. Order accordingly.

(R. G. KETKAR, J.)

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