

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.11407 OF 2016

George Felix (Sankar) Colas and others ... Petitioners
Vs.
Silvi Roman Colas (decd) through Aaudri
Roman Colas and others ... Respondents

None present

CORAM : R. G. KETKAR, J.
DATE : JANUARY 23, 2017

P.C. :

Not on Board. At the instance of the petitioners, matter is taken up for production. However, none appears for the petitioners.

2. By this Petition under Article 227 of the Constitution of India, petitioners have challenged the judgment and order dated 11.03.2016 passed by the learned District Judge-7, Thane in Civil Miscellaneous Application No.149 of 2015. By that order, the learned District Judge rejected the application made by the petitioners for condoning the delay of 29 days in filing the substantive appeal against the judgment and decree dated 25.10.2013 passed by the learned 6th Joint Civil Judge, Senior Division, Thane in Regular Civil Suit No.297 of 2011.

3. Petitioners, hereinafter referred to as 'plaintiffs', instituted Regular Civil Suit No.297 of 2011 against the respondents, hereinafter referred to as 'defendants', inter alia praying for declaration that plaintiff No.1 is an absolute owner of the suit property bearing Survey No.398 with house standing thereon and that plaintiffs No.2 to 6 are the joint owners in respect of the property bearing C.S.No.534 with house standing thereon. The Suit was dismissed on 25.10.2013.

4. Aggrieved by that decision, plaintiffs preferred substantive appeal under Section 96 of C.P.C. As there was delay of 29 days in filing the Appeal, they took out application for condonation of delay. By the impugned order, the learned trial Judge has dismissed the application. In the case of ***Sheodan Singh Vs. Daryao Kunwar***, AIR 1966 SC 1332 as also ***Shyam Sundar Sarma Vs. Pannalal Jaiswal***, (2005) 1 SCC 436, the Apex Court has held that dismissal of application of condonation of delay in filing substantive appeal under Section 96 read with Order 41 of C.P.C. amounts to decree. In view thereof, petitioners have an equally efficacious, alternate, statutory remedy of filing Second Appeal against the impugned order.

5. Reserving liberty to the petitioners to file Second Appeal, Petition is dismissed as not maintainable. It is made clear that I have not examined the merits of the case. The time spent by the petitioners in prosecuting this Petition from 29.09.2016 till date shall be excluded in computing the delay. Office is directed to return certified copies of the orders to the petitioners. Order accordingly.

(R. G. KETKAR, J.)

Minal Parab