

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

**SECOND APPEAL NO.141 OF 2017
WITH
CIVIL APPLICATION NO.332 OF 2017
IN
SECOND APPEAL NO.141 OF 2017**

Baban Appaji Kachare ...Appellant/Applicant
vs.

Smt. Shakuntala Balaso @ Balkrishna Namekar & Ors. ...Respondents

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Mr. S.A. Rajeshirke, i/b. P.B. Gujar, for the Appellant.

Mr. Santaram Tarale, for Respondent Nos. 1 and 2.

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CORAM : S.C. GUPTE, J.

DATED : 2 MARCH 2017

P.C. :

. Heard learned Counsel for the parties. This appeal is admitted on a substantial question of law framed in clause (A) of ground 1. By consent of Counsel for both sides, the appeal is taken up forthwith for hearing.

2. The appeal challenges an appellate order passed by the District Court at Pune on a miscellaneous civil application filed by the Applicant (Appellant herein) for condonation of delay of 196 days in filing the first appeal. The learned District Judge dismissed the miscellaneous civil application, thereby declining to entertain the Applicant's first appeal, on the ground that the Applicant had produced

no evidence in respect of the ground urged for condonation of delay, namely, indisposition of the concerned Applicant. In particular, the order noted that there was no medical certificate produced on record to show that the Applicant was incapacitated. The ground, on which condonation of delay was sought, was that the conduct of the matter was looked after by Applicant No.1 (Original Defendant No.4) and that he was suffering from Tuberculosis and was completely bed ridden as a result, between 20 June 2013 and 10 November 2013. A medical certificate dated 10 November 2013, issued by the medical practitioner, who was treating the Applicant, was produced. This document was admittedly on record. In the face of this document, the learned District Judge could not observed in the impugned order that there was no evidence produced, or there was no medical certificate produced, in support of the application for condonation of delay.

3. It is submitted by learned Counsel for the Respondents that the evidence produced on record may show that Applicant No.1 could not take steps for filing of the first appeal, but that there is no explanation as to why Applicant No.2, who was a joint Applicant in the miscellaneous civil application, could not file and prosecute the same earlier. It is explained in the miscellaneous civil application that Applicant No.2, who was working in LIC as a senior clerk, was under an impression that the suit, which relates to an agricultural property, was being looked after by Applicant No.1, who was an agriculturist. Even this aspect of the matter does not find mention in the impugned order. There is no discussion at all in this behalf.

4. In the premises, the impugned order of the District Court, which suffers from a serious infirmity of law, being contrary to the record and without even a semblance of application of mind, cannot be sustained. The Second Appeal is, accordingly, allowed by setting aside the impugned order of the District Court at Pune dated 30 July 2016 passed in the miscellaneous civil application. The delay of 196 days in filing the first appeal is condoned and the District Court at Pune is directed to register the civil appeal and hear the same in accordance with law. No order as to costs.

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

(S.C. GUPTE, J.)