

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

**CIVIL APPLICATION NO.323 OF 2017
IN
SECOND APPEAL (STAMP) NO.25996 OF 2016**

Shri Vasant Mahadu @ Mahadev Naik ... Applicant/Appellant
vs.
Shri Datta Vasant Naik & Ors. ... Respondents

Mr. G.N. Salunke with Mr. V.S. Kokitkar for the Applicant/Appellant.
Mr. Anand S. Patil for the Respondents.

Coram : **A.A. Sayed, J.**
Date : 07 November 2017

P.C. :

1 This Civil Application seeks condonation of delay of 1 year 9 months in filing the Second Appeal.

2 Paragraph Nos.3 and 4 of the Civil Application read as follows:

“3. The Appellant states that the impugned judgment and decree passed on 16/09/2014. The Appellant was not aware about the decree passed by the Hon'ble Court after making enquiry with the Advocate the appellant learnt that appeal is dismissed. The advocate of appellant had not informed the appellant the appeal is disposed off. The Appellant applied for certified copy on 11/07/2016 and the copy was delivered on 19/07/2016. There is about 1 year 9 months and 3 days delay in filing the Second Appeal which is not deliberate or intentional and deserves to be condoned by this Hon'ble Court.

4. The Appellant state that the appellant is illiterate person, agriculturist and was not aware that the appeal is dismissed against him. The time also lapse for taking advice, for collecting the papers and for making financial arrangement therefore the delay is not deliberate or intentional and deserves to be condoned by this Hon'ble Court."

3 Learned Counsel for the Applicants has relied on the judgment in the case of Esha Bhattacharjee vs. Managing Committee of Raghunathpur Nafar Academy and others, (2013) 12 SCC 649. He submitted that the Applicant was not informed about the decree by his Advocate and the delay ought to be condoned.

4 Affidavit-in-Reply has been filed by the Respondents. Learned Counsel for the Respondents submitted that as stated in Affidavit-in-Reply, it is difficult to believe that for 22 months the Applicant did not meet with his Advocate and/or his Advocate did not inform him about passing of the impugned order. Learned Counsel for the Respondents relied upon the following judgments:

- i) The State of West Bengal vs. The Administrator, Howrah Municipality and others etc., AIR 1972 SC 749;
- ii) Kamalbai w/o Narasaiyya Shrimal and another vs. Ganpat s/o Vithalrao Gavare, 2007 (1) Mh.L.J.

5 It is now well settled that the question of condonation of delay in filing Appeal is required to be considered on case to case basis and

there is no straight jacket formula that can be laid down in that regard.

It is noticed that the suit is a partition suit. In my view the Applicant has made out a case to condone the delay and the possibility of the Applicant not being informed of the passing of the decree cannot be ruled out. In the circumstances, I am inclined to allow the Civil Application and condone the delay subject to costs. Hence, the following order:

O R D E R

- a) The Civil Application is allowed in terms of prayer clause (a) subject to costs of Rs.5,000/- to be paid by the Applicant to the Respondents.
 - b) The Civil Application is disposed of accordingly.
6. List the Second Appeal for admission on 28 November 2017 if the objections are removed and the Second Appeal is numbered.

(A.A. Sayed, J.)