

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO.330 OF 2016
WITH
CIVIL APPLICATION NO. 606 OF 2016

Gajanan s/o Suhas More Appellant

Vs.

Smt. Vijaya Suhas More & Ors. Respondents

Mr. Ashok Misal for the Appellant and Applicant.

Coram : N.M. Jamdar, J.

Date : 11 April, 2017

ORAL ORDER.:

Heard the Learned counsel for the Appellant.

2 The Appellant has challenged the judgment and order passed by the learned District Judge, Barshi dated 12 October, 2015 in Civil Miscellaneous Application No.51 of 2014 refusing to condone the delay of 1 year, 5 months and 27 days in filing the appeal against the decree of partition dated 2 April 2012.

3 The Appellant is the Defendant No. 1 in the suit. The parties are related. The Respondents are Appellant's mother and sister. The Respondent-sister filed a suit for partition of the suit properties. The learned Civil Judge, Senior Division, Barshi, after considering that the properties were joint family properties and the relinquishment deed was not as per law, proceeded to grant partition and separate possession and declared that the parties will have 1/5th share in the suit property. Thereafter the appeal was filed by the Appellant after delay of 1 year, 5 months and 27 days with an application for condonation of delay, which has been rejected by the impugned order.

4 The learned counsel for the Appellant sought to rely upon decision of the Single Judge of this Court, reported in A.I.R. 1999 Bombay, page 235 and contended that liberal approach needs to be adopted.

5 While extending the equity jurisdiction, justice to both sides will have to be kept in mind and rights accrued to the Respondents under the decree cannot be lightly ignored. In the present case, the relationship between the parties is admitted. Decree has been passed granting shares to the parties. The Appellant appeared through an Advocate in the suit. Keeping these facts in mind, the learned District Judge was right in scrutinising whether the

delay of 1 year, 5 months and 27 days, which cannot be considered as of short duration, was sufficiently explained. The application for condonation of delay is bereft of any particulars whatsoever. Settlement talks and sale of some property are the only reasons given. Such general reason can be given by any litigant. The learned Judge has rightly observed that absolutely no details were given as to where the settlement talks took place, number of sittings, before whom the settlement talks took place. It was open to the Appellant to examine witnesses, who acted as the Mediator, who would have been then cross examined. No such efforts were taken.

6 It is clear that only object of the Appellant as to somehow protract the litigation to harass the mother and the sisters. Looking at the nature of the litigation and absence of any cogent explanation, it cannot be said that the discretion used by the District Judge is perverse or the facts did not justify the use of discretion in this manner. No substantial question of law arises. The Second Appeal is accordingly dismissed.

7 In view of dismissal of the Second Appeal, the Civil Application does not survive, the same is accordingly disposed of.

(N.M. Jamdar, J)