

Sequeira

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

***SECOND APPEAL (Stamp) NO.34357 OF 2016
Along with
CIVIL APPLICATION NO. 1938 OF 2016***

Shri.Shankar Bhau Patil. .. Appellant
Vs
Shri Akaram Gopala Patil and others. .. Respondents

MrPrashant Bhavake, for the Appellant & Applicant.

Mr.S.R.Ganbavale, for Respondent No.1.

***Coram : N.M.Jamdar, J.
Date : 4 April 2017.***

Oral Order :

Heard learned counsel for the parties.

2. The Appellant has challenged the Judgment and Order dated 10 November 2016 passed by the learned District Judge, Kolhapur rejecting the Miscellaneous Application No.247 of 2015 filed by the Appellant for condonation of delay in filing the First Appeal. The delay is of three years, eleven months and twenty six days i.e. approximately four years.

3. The Respondents-Plaintiffs filed a Regular Civil Suit No.352 of 2007 in the Court of Civil Judge Junior Division, Kolhapur against the present Appellant as well as other Defendants. The Defendant No.2 in the said Suit is the son of the present Appellant. The Suit was for partition and for injunction. The case of the Respondents-Plaintiffs was accepted by the learned Civil Judge. The Suit was contested by the Appellants and Defendant No.2 by engaging an Advocate and filing common Written statement. The learned Civil Judge accepted the case of the Respondents-Plaintiffs and decreed the Suit by judgment and order dated 24 August 2011. Thereafter the Appellant filed an appeal along with the application for condonation of delay on 14 August 2015 with delay of approximately four years. The learned District Judge by the impugned order has rejected the said Application.

4. The learned counsel for the Appellant submitted that the Appellant was under treatment as he had suffered heart attack and he was advised bed-rest. The Appellant for that purpose examined the concerned doctor. It was the Appellant in cross-examination who admitted that he was admitted to the hospital only from 1 December 2013 to 11 December 2013 and that except for this period he was not hospitalised. He also admitted that nothing precluded his son from filing an appeal or filing any application for condonation of delay. The doctor who was examined has also accepted that the condition of the Appellant was not critical. This evidence has been considered by

the learned District Judge and the learned District Judge has found that on the medical ground the case of the Appellant cannot be accepted. Considering the evidence on record and the admissions of the Appellant himself, the finding cannot be stated to be perverse. If the Appellant was admitted in the hospital only for period of ten days, illness therefore, cannot be an explanation for delay of approximately four years.

5. It was then contended by learned counsel for the Appellant that since there were settlement talks between the parties, there was delay in filing the Appeal and only when measurements were being undertaken that the Appellant came to know that the settlement is going to take place. For this purpose, the Appellant examined a witness who is stated to have acted as a mediator. This witness has stated that mediation talks were in the year 2011 i.e. prior to disposal of the Suit. Thereafter as far as the period of four years is concerned, there are absolutely no particulars given by this witness. Mere self-saving statement of the Appellant regarding settlement talks cannot be treated as sufficient, as such standard grounds can be taken by any litigant. No particulars are given as to where the settlement talks begun, where were they held in the period of four years, what was the understanding and whether the understanding was converted in writing. The learned District Judge has rightly disbelieved theory of settlement talks to explain delay of four years.

6. The Respondents-Plaintiffs have succeeded in the trial Court and a decree of possession is passed in their favour. The learned counsel for Respondents has also drawn my attention to the statement of the Appellant in the cross-examination that the Appellant has no objection for handing over possession of the property which has been purchased by the Respondents-Plaintiffs. In these circumstances, the use of judicial discretion by the learned District Judge cannot be termed as perverse. No question of law arises. Second Appeal is accordingly dismissed.

7. In view of the above, the Civil Application also stands disposed of.

(N.M.Jamdar, J.)