

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 7921 OF 2017

Ganesh Feed Industries

..... Petitioner

VERSUS

Vijayrao Kondiram Borawake & Ors.

..... Respondents

Mr.Ashok B. Tajane for the Petitioner.

Mr.Vishwanath S. Talkute for the Respondent no. 1.

CORAM : R.D. DHANUKA, J.

DATE : 2nd NOVEMBER, 2018

P.C.

By this petition filed under Article 227 of the Constitution of India, the petitioner (original plaintiff for decree holder) has impugned the order dated 18th March, 2017 passed by the learned Ad-hoc District Judge – 2, Satara below Ex.63 in Civil Misc. Application No. 157 of 2016 filed by the respondent no.1 condoning the delay of 10 years 8 months and 4 days in filing an appeal.

2. The trial court has passed a decree in Special Civil Suit No. 201 of 1997 after hearing both the parties. The petitioner has thereafter filed execution application. Admittedly, the respondent no.1 has participated in the said proceeding, however did not challenge the said decree for a period of 10 years 8 months and 4 days.

3. With the assistance of the learned counsel for the parties, I have perused the application made by the respondent no.1 seeking condonation of delay and the findings rendered by the learned Ad-hoc

District Judge – 2, Satara. The respondent no.1 has not explained the gross delay of 10 years 8 months and 4 days.

4. I do not find any infirmity with the impugned order passed by the learned Ad-hoc District Judge – 2, Satara dated 18th March, 2017. There was absolutely no explanation rendered by the respondent no.1 in the application for condonation of delay of 10 years 8 months and 4 days.

5. The impugned order dated 18th March, 2017 thus passed by the learned Ad-hoc District Judge – 2, Satara is quashed and set aside *qua* the petitioner herein only. Application (Ex.63) as well as Civil Misc. Application No. 157 of 2016 are dismissed *qua* the petitioner only.

6. Since the other parties to the appeal have not impugned the order passed by the learned Ad-hoc District Judge – 2, Satara allowing the condonation of delay, the respondent no.1 would be allowed to proceed with the appeal filed by him against the other respondents.

7. The petitioner is allowed to execute the decree insofar as respondent no.1 is concerned. Till such decree is executed by the petitioner, the amount deposited by the respondent no.1 arising out of the decree passed by the trial court against the respondent no.1 shall not be allowed to be withdrawn by the respondent no.1.

8. Writ petition is allowed in the aforesaid terms. There shall be no order as to costs.

[R.D. DHANUKA, J.]