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

SECOND APPEAL NO.135 OF 2018

Subrav Vithoba Pachpund	...	Appellant.
V/s.		
Rani Pacnpund and others	...	Respondents

Ms. Geeta Mulekar, for the appellant.
Ms. Shraddha Pawar, for respondent Nos. 1 & 2.

CORAM : DR.SHALINI PHANSALKAR-JOSHI, J.

DATE : 7th AUGUST, 2018.

P.C. :

- 1] Heard learned counsel for the appellant and respondents.
- 2] This Second Appeal is preferred against the order dated 26.10.2016, passed by the Principal District Judge, Solapur, in Misc. Civil Application No.60 of 2011, thereby rejecting the application for condonation of delay occurred in filing first Appeal.
- 3] The said appeal was filed by the present appellant, challenging the judgment and decree dated 22.07.2010, passed by the Civil Judge Junior Division Mohol, in R.C.S.No.38 of 1998. The delay in filing first Appeal was more than six months and the first Appellate Court found that the delay is not properly explained and hence rejected the said application.

4] The submission of learned counsel for the appellant is that the suit was decreed on 22.07.2010. The appellant came to know about it subsequently and he immediately filed an application for certified copy on 18.01.2011. The certified copy was received on 23.01.2011 and on 3.2.2011, the first Appeal was filed.

5] According to learned counsel for appellant, therefore the delay was not substantial and the reasons given for the same are justified, as the advocate for the appellant did not inform the appellant about the progress of the suit and decision of the suit. Hence according to him, considering very short length of the delay, the appellate court should have condoned the same.

6] Per contra, learned counsel for respondents has submitted that the appellant was very much aware of the decision of the suit. He had appeared in the suit. He has filed his Vakalatnama in the matter and as can be seen from the Roznama of the suit, parties and their advocates were present when the judgment was pronounced. Thus, it is submitted that the reason given for condonation of delay is not proper and it is not sufficient.

7] The perusal of the impugned order passed by the first Appellate Court, goes to show that the appellate Court has also observed that even if the lenient view is taken, the explanation given by the appellant for the condonation of delay is very vague, that on

account of some agricultural work and family problems, he could not file the appeal in time and hence the Appellate Court has rejected the said application.

8] Taking overall view in the matter and having regard to the fact that the appellant was very much represented by his advocate in the trial Court and advocate for appellant has argued the matter in the trial Court, it is difficult to accept that appellant was not aware of the decision of the case. He has applied for certified copy after lapse of 4 to 5 months of the decision and no proper explanation is given, even though certified copies were obtained on 23.1.2011, as to why for a period of two weeks, he did not file any appeal.

9] In such circumstances, as the cause given for condonation of delay is not sufficient, it has to be held that the appellate Court has rightly rejected his application for condonation of delay. It has to be stated that it is not the length of the delay which is material, but whether the cause given for condonation of delay is sufficient or not that is relevant. In this case, as the cause cannot be called as sufficient one, no fault can be found if the appellate court has rejected the application. It was necessary for the appellant to be diligent. If he has not bothered to make any enquiry about the progress of the suit, he cannot put the entire blame on the shoulders of his advocate.

10] Even on merits, it can be seen that the decree passed by

the trial Court does not call for any interference, as respondents being daughter-in-law and grand-daughter of the pre-deceased son of Vithoba, are granted share in the property of Vithoba, who has died during the pendency of the suit. Hence on merits also, it cannot be said that the appellant is having any case.

11] In view thereof, the Second Appeal raises no substantial question so as to warrant interference in the impugned order passed by the first Appellate Court.

12] The Second Appeal, therefore, stands dismissed.

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[DR.SHALINI PHANSALKAR-JOSHI, J.]