

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO.111 OF 2018

Asha Mukesh Jain and Ors.	 Appellants
V/s.	
Dattu Kondu Gaikwad (Since Deceased),	
Through LRs.:-	
Janabai Dattu Gaikwad and Ors.	 Respondents

Mr. Rajaram B. Deshmukh for the Appellants.

Mr. Rahul S. Kadam is present.

Ms. Sandhya Nambidi for Respondent No.2.

CORAM : DR. SHALINI PHANSALKAR-JOSHI, J.

DATE : 14TH AUGUST, 2018.

P.C. :

1. Learned counsel Mr. Rahul S. Kadam submits that, the Appellants have taken papers from him and engaged Advocate Mr. Rajaram B. Deshmukh, who is also present before the Court. In view thereof, Advocate Mr. Rahul S. Kadam is discharged from the case.

2. Heard Mr. Deshmukh, learned counsel for the Appellants, and Ms.Nambidi, learned counsel for Respondent No.2.

3. This Second Appeal is preferred against the 'Judgment and Order'

dated 28th November 2017 passed by the District Judge-14, Pune, in Civil Miscellaneous Application No.283 of 2011. The said application was filed by the Appellants for condonation of delay in preferring the First Appeal against the 'Judgment and Decree' dated 30th September 2010 passed by the Civil Judge, Junior Division, Vadgaon-Maval, Pune in Regular Civil Suit No.63 of 2004.

4. By the said 'Judgment and Decree' dated 30th September 2010, the Suit filed by the Appellants came to be dismissed. According to the Appellants, as Appellant Nos.1 and 2 are permanent residents of Rajasthan and Madhya Pradesh, respectively, they had engaged Advocate R.S. Bhandari to look after the Suit. On account of their physical ailments, they could not remain present in the Suit. As a result thereof, there was delay in filing the First Appeal. It is submitted that, the first Appellate Court has, however, refused to condone the said delay; though it was only of 65 days and rejected the said application and hence, the impugned order is required to be set aside.

5. Per contra, learned counsel for Respondent No.2 has pointed out that, even when the impugned order was passed by the first Appellate Court on 28th November 2017, the Appellants remained absent before the first Appellate Court. It was also pointed out that, the reason given for condonation of delay was the illness or the physical ailments of the

Appellants; however, not even a single medical certificate was produced on record.

6. The impugned order passed by the first Appellate Court also shows that, the certified copies of the 'Judgment and Decree' were collected in time by the Advocate of the Appellants and no evidence was produced to support the contention of the Appellants that, on account of physical ailments or illness, they could not attend the Court. It is pertinent to note that, the Appellants even failed to remain present through their Advocate also in the application for condonation of delay.

7. In such situation, as no sufficient cause is made out, if the first Appellate Court has thought it fit to dismiss the application, in Second Appeal, there is no substantial question of law raised to interfere in the discretion exercised by both the Courts below. The Second Appeal, therefore, being devoid of merits, stands dismissed.

[DR. SHALINI PHANSALKAR-JOSHI, J.]