

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

SECOND APPEAL (STAMP) NO.2009 OF 2018
ALONG WITH
CIVIL APPLICATION NO.117 OF 2018
AND
CIVIL APPLICATION NO.118 OF 2018

Shaikh Fahim Chandsab	 Appellant-Applicant
V/s.	
Shaikh Chandsab Ajimsab and Anr.	 Respondents

Mr. Santaram A. Tarale for the Appellant-Applicant.

Mr. Zakir M. Shaikh for the Respondents.

CORAM : DR. SHALINI PHANSALKAR-JOSHI, J.

DATE : 17TH JULY 2018.

P.C. :

1. Heard Mr. Tarale, learned counsel for the Appellant-Applicant, and Mr. Shaikh, learned counsel for the Respondents.
2. By this Civil Application, the Applicant is seeking condonation of delay of 12 days in preferring the Second Appeal. For the reasons stated in the Civil Application, the delay is condoned and the Second Appeal is taken up for final hearing at the stage of admission itself.
3. This Second Appeal is preferred against the 'Judgment and Order' dated 4th October 2017 passed by District Judge-7, Pune, in Civil Miscellaneous Application No.561 of 2017. The said application was filed by the Appellant under Section 5 of the Limitation Act, for condonation of delay of 10 months and 15 days occasioned in preferring Appeal against the 'Decree' dated 12th July 2016 passed in Special Civil Suit No.490 of 2013 by the 5th Additional Judge, Small Causes Court, Pune.

4. The first Appellate Court has rejected the said application on the ground that, the reason given is not at all satisfactory. The reason given by the Appellant before the first Appellate Court was that, he was unaware about the dates and stage of the proceeding, as his Advocate did not inform him about the same. However, it is pointed out by learned counsel for the Respondents that, the Appellant was very much served with the summons of the Suit. Thereafter, he appeared in the Suit through his Advocate; but, despite opportunity, failed to file written statement. Hence, when the Suit came up for hearing without written statement, at that time also, Respondents have given notice to the Appellant for producing the original documents. Despite receipt of the said notice also, the Appellant failed to remain present. Hence, Respondents have produced the secondary evidence with the permission of the Court. Thereafter, the Suit was decreed and then in the final decree proceedings, when the notice was issued, at that time also, it was served and Appellant did not remain present and thereafter he is saying that he was not aware of the proceedings.

5. To say the least, this explanation cannot be accepted in any way and rightly the Appellate Court has rejected the same and along with it, dismissed his application for condonation of delay, it being devoid of merits.

6. Moreover, the facts of the present case, reveal that the Appellant is the son of the Respondents. Despite the decree passed by the Trial Court, the Respondents are deprived from getting possession of their own property, which was purchased by them. The record also shows that, the Appellant is given 1/3rd share by the Trial Court itself in its decree, though it was a 'Judgment and Decree' without written statement. Hence, the Appellant is not going to suffer any loss or hardship, even if the First Appeal or the Second Appeal is not admitted.

7. No substantial question of law as such is raised in this Second Appeal. Hence, the Second Appeal stands dismissed.

8. The ad-interim stay to the issuance of possession warrant, granted in this Second Appeal, stands vacated forthwith.

9. In view of the dismissal of the Second Appeal, Civil Application No.118 of 2018 pending therein does not survive and the same stands disposed off as infructuous.

[DR. SHALINI PHANSALKAR-JOSHI, J.]