

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

SECOND APPEAL (STAMP) NO.10943 OF 2018
ALONG WITH
CIVIL APPLICATION NO.452 OF 2018

Hasan Abbas Qureshi	 Appellant / Applicant
V/s.	
Deepak Pralhad Sonawane	 Respondent

Mr. Ajit J. Kenjale, i/by Mr. Suraj J. Bansode, for the Appellant-Applicant.

None for the Respondent.

CORAM : DR. SHALINI PHANSALKAR-JOSHI, J.

DATE : 19TH APRIL, 2018.

P.C. :

1. Heard Mr. Kenjale, learned counsel for the Appellant-Applicant.
2. The Appellant is challenging the order dated 7th March 2018, passed by the District Judge-9, Pune, thereby rejecting his Civil Miscellaneous Application No.943 of 2017, which was filed for condonation of delay of 667 days in filing the Appeal against the decree of possession passed by the Trial Court.
3. As per the contention of the Appellant, he has engaged his Advocate and totally relied upon his Advocate to take the requisite steps to protect his interest. However, as the Advocate has not taken those steps, nor informed him about the dates; as a result, the Suit came to be decreed without written statement. He came to know about the

decreeing of the Suit only when he received the notice of execution proceedings and thereafter, he has filed this application for condonation of delay, in order to prefer the Appeal.

4. In support of his submissions, learned counsel for the Appellant has relied upon the Judgment of this Court in the case of *Ashok Ravji Vadodriya and Ors. Vs. Municipal Corporation of Greater Bombay, 2004 AIR(Bom) 8*, wherein it was held that,

“Having regard to the adversarial legal system of this country, the litigant, after engaging an Advocate and filing of the Vakalatnama, is not responsible for tracking the case. Client should not be obliged or duty bound to inform the Advocate about dates or Court of hearing. Advocate has to be vigilant and if the case is dismissed for default, it is the default of the Advocate.”

5. Even if these observations are accepted, in that case also, one has to know what action the Appellant has taken against his Advocate, if the Advocate, according to him, has not performed his duties properly, nor bothered to inform him about the dates. For that matter, even the Advocate is also not examined in this case and no notice is issued to the Advocate. As rightly observed by the Trial Court, the entire attempt on the part of the Petitioner is just to protract the execution of the ‘Decree’ and to continue to remain in possession of the suit property. There is no other ground except putting entire blame on Advocate representing him. As regards his contention that, his mother was ill, the Appellate Court has considered that aspect also. It is noted by the Appellate Court that,

mother of the Appellant has expired on 3rd October 2016 and there were other brothers of the Appellant to look after the mother. Thus, no sufficient cause is made out for explaining such a long delay of 667 days and hence, the Appellate Court has rightly held that, even if the Court is expected to adopt the liberal approach while considering the application for condonation of delay, the sufficient cause is required to be made out by the Applicant for condonation of such delay. Mere putting entire blame on the Advocate cannot be called as a sufficient cause to condone the delay. Otherwise, it will become a practice for the litigants to prolong and protract the hearing of the civil litigation, If it is noticed that the moment blame is placed on the Advocate, the delay or lacunae and carelessness on their part is condoned without further enquiry. Especially when such party is in possession of the property, this cause for the delay of more than two years in filing the Appeal has to be construed strictly.

6. In view thereof, the discretion exercised by the Appellate Court in rejecting such application for condonation of delay, does not call for any interference. Second Appeal, therefore, stands dismissed.

7. In view of dismissal of the Second Appeal, Civil Application No.452 of 2018 pending therein does not survive and the same stands disposed of as infructuous.

[DR. SHALINI PHANSALKAR-JOSHI, J.]