

VPH

IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CIVIL APPELLATE JURISDICTION

SECOND APPEAL (St.) No. 18818 OF 2018

|                     |     |            |
|---------------------|-----|------------|
| HDFC Bank           | ... | Appellant  |
| Vs.                 |     |            |
| State Bank of India | ... | Respondent |

\*\*\*

Mr. Mahendra M. Agvekar, for the Appellant.

\*\*\*

CORAM : A. M. DHAVALE, J.  
DATE : SEPTEMBER 5, 2018

PC :-

1. Heard learned advocate Mr. Agvekar for the Appellant. Special Civil Suit No. 357 of 2008 was disposed of by the judgment and decree dated 23<sup>rd</sup> December, 2011 passed by 4<sup>th</sup> Jt. Civil Judge, J. D. Thane, granting decree of Rs.5,00,000/- with interest @ 18% per annum from the date of suit in favour of State Bank of India against the HDFC bank. Though the HDFC Bank has appeared in the suit and written-statement was filed, it did not contest the suit at the time of trial. Instead of filing application under Order IX, Rule 13 C.P.C. for setting aside

exparte decree, appeal was filed alongwith an application for condonation of delay, being Civil Misc. Application No. 118 of 2017. There was delay of 4 years and 2 months. HDFC bank pleaded that the concerned officer who was looking after the matter was transferred to another branch and therefore, he did not update status of the matter. Thus, according to the Applicant, the delay occurred due to mis-communication. Learned District Judge-8, Thane was not convinced with the explanation given for condonation of delay and the application came to be rejected. Hence, the appellant has preferred this second appeal.

2. Learned advocate for the Appellant submits that the legal advisor who was looking after the matter had expired but the said fact was not pleaded before the first appellate court and it is, even, contrary to the averments made in the application for condonation of delay. The contention of delay is a question of fact. There is gross delay. Learned first appellate court has considered the said aspect and refused to condone the delay of 4

years and 2 months. I do not find any perversity or ignorance of any admissible material while deciding the application. No case is made out, nor any substantial question of law is involved. Hence, the appeal is not maintainable. The second appeal is therefore, dismissed in *limine*.

Sd/-  
[ A. M. DHAVALE, J.]

Vinayak Halemath