vks

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO.773 OF 2017
WITH
CIVIL APPLICATION NO.336 OF 2017
IN
SECOND APPEAL NO.773 OF 2017

Kaluram K Hargude ... Appellant.
V/s.
Hanumant Kerba Hargude
and ors ... Respondents

Mr. Rvindra S. Pachundkar, for the appellant.
Mr. Mohan B. Jadhav, for respondent Nos. 1 to 3

CORAM : DR.SHALINI PHANSALKAR-JOSHI, J.

DATE : 31st JULY, 2018.

P.C. :

1] Heard learned counsel for appellant and respondents.

2] This appeal is directed against the judgment and order dated 24.9.2016 passed by District Judge-18, Pune thereby dismissing Civil Misc. Application No.1 of 2011 filed by the appellant for condonation of delay in preferring the First Appeal, against the judgment and decree dated 14.03.2006, passed by the Civil Judge Junior Division, Shirur, in R.C.S.No.194 of 2001.

3] The said suit was filed by the respondent for partition and separate possession of his share in the ancestral joint family

property. The appellant was original defendant No.1. Though summons of the suit was duly served on him and he appeared in the suit, he remained absent thereafter and also failed to file written statement. Therefore, the suit proceeded without written statement and it came to be decreed.

4] According to appellant, he came to know about this exparte decree only when the notice of execution proceeding was received by him. Hence there was delay of 4 years, 8 months and 26 days in filing the First Appeal. The reason given for the condonation of delay was that he was not feeling well and there were some other circumstances which prevented him from filing the appeal.

5] However, as rightly held by the first Appellate Court, the reason given by the appellant is very vague,general and omnibus in nature. Nor medical certificate was produced to support the ground of alleged illness. In view thereof, considering the inordinate delay of four years, which was not at all sufficiently explained by the appellant, the first Appellate court has rightly rejected his application.

6] It is submitted by learned counsel for the respondent that the decree is already executed way back in the year 2010 itself and thereafter the said application was filed before the First Appellate Court. Moreover, the only ground on which appellant wants to

challenge the decree is that he should be given half share in the suit land. This aspect is considered by the trial Court, in its judgment and found that the original defendant Nos. 2 and 3, who are the married daughters have not executed any release deed though it was claimed that they have relinquished their shares. In view thereof, the trial Court has rightly apportioned the shares of the parties, hence on merit also, appellant is not having any case.

7] Otherwise also, as he has failed to offer any sufficient cause for condonation of such inordinate delay, no fault can be found in the impugned order passed by the first Appellate Court, while dismissing his application.

8] The Second Appeal raises no substantial question of law. Therefore, the Second Appeal being without any merit, stands dismissed.

8] In view of dismissal of appeal itself, Civil Application No.336 of 2017 becomes infructuous and the same is accordingly disposed off.

[DR.SHALINI PHANSALKAR-JOSHI, J.]