

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

**SECOND APPEAL NO.376 OF 2019
WITH CA/7559/2019 IN SA/376/2019**

PRABHU SAMBHAJI GOVANDE
VERSUS
MANOHAR CHANDU GOVANDE AND ANOTHER

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Mr.A.R. Borulkar, Advocate for appellant.

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CORAM: V.L. ACHLIYA, J.
DATE : 11.07.2019

ORAL ORDER:

Being aggrieved by the order dated 14.01.2019 passed by the District Judge-5, Nanded to reject the Misc. Civil Application (RJE) No.9/2012 filed along with appeal to condone the delay in filing the appeal, the appellant-original defendant has preferred this Second Appeal.

2. Heard learned counsel for the appellant. Perused the judgment and order passed by the trial Court and order passed by the Appellate Court to reject the application for condonation of delay.

3. On due consideration of submissions

advanced, I am of the view that no case is made out to entertain the Second Appeal. No substantial questions of law involved in the appeal. It is apparent from the face of record that the appellant throughout acted negligently. In spite of service of suit summons, the appellant – defendant failed to file written statement. The suit proceeded without his written statement. The application seeking condonation of delay of 19 months was filed with a cause that due to illness the appellant could not contact his Advocate. The First Appellate Court has found the cause assigned not sufficient to condone the delay. It is further noted that the appeal was dismissed in default to take steps to serve the respondents. In spite of imposing cost, the cost was not deposited. The First Appellate Court has observed in para 18 as under:-

“18. On perusal the record of the present application it revealed that the applicant moved this applicant for condonation of delay on 16.01.2012. But, failed to deposit the process fees. Thereafter at about 15 dates of

the proceeding the applicant has not deposited the process fees. The said act of the applicant shows his intention to prolong the matter. The applicant malafidely has not deposited the process fees with intention to deprive the rights of present respondent No.1 (Original plaintiff) from taking fruits of the decree which is passed in his favour. Moreover, according to applicant there is delay of one year for preferring appeal. The judgment in RCS No.64/2009 (old RCS No.198/2008) is passed on 30.04.2010. the applicant filed this application for condonation of delay on 16.01.2012. The applicant has to file appeal till 30.05.2010. Hence there is delay of 01 years 07 months 16 days for preferring appeal. Moreover the applicant has not filed any document about his illness. The applicant has not given any satisfactory reason for condonation of delay. In such situation, the delay in filing appeal cannot be condoned."

4. Since the appeal raises no substantial questions of law, I am not inclined to entertain the appeal. Appeal is dismissed. Civil Application if any along with appeal, the same stands disposed of in terms of this order.

[V.L. ACHLIYA]
JUDGE

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