

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

BENCH AT AURANGABAD

4 SECOND APPEAL NO.119 OF 2019
WITH CA/8527/2018 IN SA/119/2019

BABAN @ SAKHARAM NAMDEV RAUT
VERSUS
SANBHAJI NAMDEV RAUT AND OTHERS

...

Advocate for Appellant : Shri Chondhekar Balaji S.
Advocate for Respondent nos.1 and 3 to 6 : Shri Kanade Angad L.
Respondent no.2 dead.

CORAM: V.L. ACHLIYA, J.

DATE: 07.10.2019

PER COURT :

1] The appellant – original defendant no.2 has preferred this second appeal challenging the order dated 9.6.2016 passed in Civil Miscellaneous Application No.43/2014 by District Judge-2, Hingoli.

2] Heard learned counsel for the appellant – original defendant no.2 and the respondents. Perused the impugned order.

3] In brief, it is the contention of learned counsel for the appellant that the reasons assigned for rejecting the application seeking condonation of delay are not sustainable in law. It is contended that the first appellate Court ought to have considered that the delay caused in filing appeal was not deliberate and

resulted due to fault on the part of Advocate representing the appellant. It is contended that for the fault on the part of Advocate, the litigant must not suffer. It is further contended that primary function of the Court is to adjudicate the dispute on merits and technicalities should not be adhered to in dispensation of justice.

4] On the other hand, learned counsel for the respondents submits that there is absolutely no case to entertain the second appeal. It is submitted that the appeal raises no substantial question of law. It is pointed out that the suit proceeded without written statement against the appellant – defendant no.2. The trial Court has observed that though the case was repeatedly adjourned, the defendant no.2 has failed to file written statement. By referring the pleadings and evidence, the learned counsel submits that the trial Court has decided the suit on merits. It is contended that no sufficient cause has been shown for condoning the delay.

5] On due consideration of the submissions advanced, I am of the view that the appeal deserves to be admitted on following substantial question of law:-

“Whether the impugned order passed by the first appellate Court is against the settled principles of law laid down in the matter of condonation of delay ?

6] In view of above, following order is passed:-

ORDER

- A] Admit.
- B] Shri A.L. Kanade Advocate waives notice of appeal for respondent nos.1 and 3 to 6.
- C] Printing of paper book is dispensed with.
- D] Learned counsel for the appellant is directed to tender copies of application seeking condonation of delay, the reply filed, if any and order passed therein with the memo of appeal filed before the first appellate court.
- E] Hearing of the appeal is expedited.
- F] Pending disposal of the appeal, further proceedings of execution of decree be kept in abeyance.
- G] Civil Application No.8527/2018 is disposed of in above terms.
- H] By consent, adjourned for final hearing to 4.11.2019
First on Board.

(V.L. ACHLIYA, J.)