

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CIVIL APPLICATION NO. 4005 OF 2018
SECOND APPEAL STAMP NO. 28597 OF 2017
WITH CA 4006/2018

Madhukar Digamber Mhetre ...Appellant

Versus

Padminbai Vithalrao Gurav & Anr. ...Respondents

.....

Mr. S. S. Dargad, Advocate holding for Mr. S. G. Chapalgaonkar, Advocate for Appellant.

Mr. D. P. Munde, Advocate holding for Mr. Shoyab Shaikh, Advocate for Respondent No. 1.

.....

CORAM : SMT. VIBHA KANKANWADI, J.

DATE : 04-02-2019.

ORAL ORDER :

01. Leave to correct is granted.

02. Heard both the sides. Present application has been filed for getting the delay in filing second appeal condoned. Present appellant is the original defendant No. 1. Respondent No. 1 is the plaintiff. Plaintiff has filed the R. C. S. No. 148 of 2005 for mandatory as well as permanent injunction. It came to be decreed by learned 2nd Joint Civil Judge, Senior Division, Osmanabad on 16.9.2010. Thereafter, present appellant approached the

District Court challenging the said Judgment and decree in R. C. A. No. 264 of 2010. The learned District Judge-4, Osmanabad has dismissed the appeal on 22.12.2016. Original defendant No. 1 intends to file the second appeal. However, there is delay of 143 days. It is stated that though he had collected the certified copies and met the Advocate, who had advised for the filing of second appeal. The learned Advocate gave him instructions to get certified copies of some more documents in order to enable him to prepare the draft. It is stated that the appellant was again required to go back to Osmanabad and collect the documents. In the meantime, he was unable to get leave from his office. He handed over those documents to the Advocate in May 2017. Thereafter, the learned Advocate took some time to draft the appeal and thereafter, there was summer vacations. In all there is delay of 143 days, which the appellant / applicant says that unintentional and therefore, prayed for condoning the same.

03. Affidavit-in-reply has been given objecting the application. Categorically, it is stated that the dates have not been given and there is absolutely no explanation as to why the second appeal was not filed from May till August 2017.

04. It is to be noted that present applicant is serving and definitely he will have to give preference to the service. According to him, though he was having the certified copies of the impugned Judgment and decree, his Advocate had advised him to collect certain more documents. The time consumed in obtaining those documents can be said to be reasonable and just for condoning the delay. However, even as per the applicant somewhere after May 2017 the draft would have been prepared and approved by the appellant. However, still it appears that there is some delay. Under such circumstance, taking liberal approach and the fact that the point regarding mandatory injunction is involved, the said delay deserves to be condoned, however, at the same time, the respondent is required to be compensated in terms of money.

05. Hence, following order;

ORDER

(i)The application is hereby allowed.

(ii)The delay caused in filing second appeal is hereby condoned subject to deposit of cost of Rs. 5,000/- within 2 weeks from the date of this Order.

(iii)After the cost is deposited, it be disbursed

to the respondent.

(iv)Registry to verify and number the second appeal and thereafter, it be placed for consideration on 14.3.2019.

[SMT. VIBHA KANKANWADI]

JUDGE

Dahibhate/-