

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 8382 OF 2012

Dashrath G. Kadam .. Petitioner
vs.
Krishna G. Kadam and ors. .. Respondents

Mr. Anand S. Patil for the Petitioner.
Mr. Amol Dhumal I/b Mr. Vijay S. Kokitkar for Respondent No.1.
Mr. S.R. Powar for Respondent Nos.2A to 2D.

CORAM : M. S. SONAK, J.
DATE : 9 APRIL 2019.

P.C. :-

- 1] Heard learned counsel for the parties.
- 2] The challenge in this petition is to the order dated 12th June 2012 by which learned Trial Judge has dismissed the petitioner's application seeking condonation of delay in taking out an application under Order 9 Rule 13 of the CPC to set aside an *ex parte* decree.
- 3] In terms of decision of the Hon'ble Supreme Court in ***Shyam Sundar Sarma vs. Pannalal Jaiswal and ors – (2005) 1 SCC 436***, the application by which delay is not condoned in taking up an application under Order 9 Rule 13

of CPC is also an order dismissing the application under Order 9 Rule 13 of CPC. Against such an order, therefore, appeal lies under Order 43 Rule 1(d) of CPC.

4] In fact, this was precise objection raised by learned counsel for the respondents.

5] Accordingly, learned counsel for the petitioner, based upon instructions from the petitioner, seeks leave to withdraw the petition with liberty to institute an appeal.

6] Leave is granted to withdraw the petition with liberty as aforesaid. This petition is disposed of in the aforesaid terms.

7] It is necessary to record that after the impugned order was made on 12th June 2012, this petition was instituted on 10th August 2012 and remained pending till date.

8] The interim order which was operating in this petition is however, continued for a period of four weeks from today. It is made clear that this interim relief is not continued on

basis of the merits of the matter, but the same is continued only because the same was in operation all this while. Therefore, if the interim relief is applied for by the petitioner in the appeal, which he proposed to institute, such application will have to be considered afresh without being influenced by this order.

(M. S. SONAK, J.)