

***IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
SECOND APPEAL STAMP NO. 29209 OF 2018
ALONG WITH
CIVIL APPLICATION NO. 1404 OF 2018***

Sachin Subhash Ulagadde

... Appellant

Vs

Suresh Raghunath Joshi & Ors.

... Respondents

Mr. U.B. Nighot, Advocate for the Appellant.

Mr. A.A. Joshi, Advocate for the Respondents No. 1 & 2.

CORAM : SANDEEP K. SHINDE J.
DATE : September 20th, 2019

P.C. :

1. Heard Mr. Nighot, learned advocate for the Appellant and Mr. Joshi, advocate for the Respondents.
2. Respondents no. 1 & 2 had filed Regular Civil Suit No. 155 of 1990 on 23.04.1990 in the Court of 4th Joint Civil Judge, Junior Division, Pandharpur and sought possession of land encroached, from Janabai Nagesh Gunjal, (original defendant no. 1) Respondent no. 3 herein. Pending suit, Janabai Gunjal sold her land holding admeasureing 2He, 36R to the appellant, which comprises the encroached suit land. That as such, the appellant was impleaded as defendant no. 2 in the year 1999. He caused

his appearance through his advocate Mr. Kane; however did not file Written Statement, nor contested the same. Resultantly, the suit was decreed on 04.09.2007.

3. The appellant herein filed Regular Civil Appeal against the decree of the Trial Court in November 2014 along with application for condonation of delay. This application was registered as Civil Miscellaneous Application No. 96 of 2014. The appellant sought condonation of 7 years delay caused in preferring Regular Civil Appeal.

4. The Appellate Court declined to condone the delay and as such rejected it on 11.06.2018. Resultantly Regular First Appeal also stood dismissed. It is against this order, Second Appeal is preferred.

5. I have perused the Civil Miscellaneous application and the impugned order. It is sought to be contended that in the year 1999, the Appellant had gone to Bangalore and remained there till 2001. From 2002 to 2003, he was in Mumbai and from 2003 onward he was in United States of America. It is further contended that his advocate Kane did not attend the proceedings nor informed him the progress in the suit, at any

point of time. It is submitted that advocate Mr. Kane passed away in May, 2008.

6. Mr. Nighot, learned counsel for the appellant submits that the appellant could not keep track of the proceedings of the subject suit since he was not in India since 2003 onward. He submits that his lawyer Mr. Kane did not inform him the progress and the orders passed in the suit from time to time and for all these reasons he was not aware of the decree passed in the year 2007. Mr. Nighot submits it constitutes a 'sufficient cause'. He further submits that in the interest of justice delay be condoned and the appellant be permitted to contest the suit.

7. Mr. Joshi, learned counsel for the respondents has taken me through the impugned order. He has invited my attention to the observations made in para no. 9 of the impugned order wherein it is recorded that, "no single reason as put forth by the present appellant is sufficient/ satisfactory to condone the delay". The application seeking condonation of delay was found vague and lacking of the material dates.

8. It is settled law that the expression 'sufficient cause' within the meaning of Section 5 of Limitation Act must receive a liberal

construction so as to advance substantial justice where no gross negligence or deliberate inaction or lack of *bonafides* is imputable to the party. In the case in hand, it is example of complete negligence on the part of the appellant to pursue the suit. There is nothing in the application to indicate that the Appellant, at any point of time, during the pendency of the suit, inquired with his lawyer about the progress and/or outcome of the suit. Therefore, it is a case of gross-negligence on the part of the appellant and therefore the order passed by the First Appellate Court declining to condone the delay cannot be faulted with. Equally, it is settled law that while condoning the delay, the Court should not loose sight of the fact that by not taking steps within the time prescribed, a valuable right accrued to other party should not be taken away by condoning delay. In this case, the suit was instituted in April 1990 and the decree was passed in September 2007. First appeal was instituted in the year 2014 and that too without explaining delay of seven years.

9. For the reasons stated, the appeal deserves no consideration.

10. It does give rise to substantial question of law.
11. Appeal is accordingly dismissed. Civil Application No. 1404 of 2018 is disposed of accordingly.

(SANDEEP K. SHINDE, J.)