

Urmila Ingale

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
SECOND APPEAL NO. 173 OF 2017
WITH
CIVIL APPLICATION NO. 300 OF 2017

Mr.Balaji Kannan Acharya and anr.	.. Appellants
Vs.	
Mrs.Gajlaxmi Acharya	.. Respondent

Mr.Manoj M.Gadkari, for the Appellants.
Mr.Siddharth C.Wakankar, for the Respondent.

CORAM : M.S.KARNIK, J.

DATE : 14th OCTOBER, 2019

ORAL JUDGMENT :

. Heard learned Counsel for the appellants and
learned Counsel for the respondent.

2. At the outset, it is pointed out by learned Counsel for
the respondent that the matter as between appellant No.1 and
respondent has been settled. It is pointed out that in the course
of execution proceedings, the appellant No.1 has filed purshish

that he has no objection to the claim of the plaintiff as granted by the trial Court. In this view of the matter, present Second Appeal is prosecuted by learned Counsel for the appellants only on behalf of appellant No.2. Appellant No.2 is the original defendant No.2. The respondent – original plaintiff who is appellant's sister had filed Suit for partition and separate possession. By the judgment and decree dated 25/08/2015, the Suit came to be decreed in favour of the plaintiff and she received a share in the suit property. As there was delay of 78 days in filing the Appeal, the appellants filed Civil Misc. Application No. 131 of 2016 for condonation of delay of 78 days in filing the Appeal. The reason stated in the application for condonation of delay was that in view of the enhancement of pecuniary jurisdiction, the appellants were under the impression that the appellants would have to file Appeal before the High Court and therefore, the limitation would be 90 days. However, it was later realised that against the judgment and decree, Appeal would lie before the District Court. This resulted in delay of 78 days. The First Appellate Court rejected the

application.

3. The present Appeal involves following substantial question of law.

“Whether the Appellate Court was justified in refusing to condone the delay of 78 days caused in filing the Appeal considering the explanation offered by the appellants ?”

4. Admit. The matter is heard finally by consent of the parties.

5. Learned Counsel for the respondent opposes the Appeal. He invited my attention to the reasons recorded by the Appellate Court and submitted that appellants have failed to show any sufficient cause to seek condonation of delay. He would urge and according to him, as rightly held by the Appellate Court that ignorance of law is no excuse.

6. I have gone through the order passed by the

First Appellate Court. The Suit is filed for partition and separate possession. The Suit is decreed in favour of the respondent – original plaintiff. There was delay of 78 days in filing the Appeal and therefore Misc. Civil Application for condonation of delay was filed. It is stated by the appellants that they were under a wrong impression that Appeal would have to be filed before the High Court for which limitation is 90 days. It was later realised that the Appeal has to be filed before the District Court and this resulted in delay of 78 days in filing the Appeal. This they say is on account of wrong advice of their Advocate which appellants followed. The delay is thus not deliberate or intentional. The appellants were under bonafide impression that the limitation for filing the Appeal is 90 days as the same was required to be filed before the High Court and in my opinion, this explanation deserves to be accepted. Considering that the delay is of 78 days, right to file Appeal should not be foreclosed only on the ground of delay. In the present facts, the inconvenience caused to the respondent can be compensated by imposing cost.

7. In this view of the matter, subject to payment of cost of Rs.5,000/- to be paid by appellant No.2 to the respondent within a period of 4 weeks from today, Appeal is allowed. The impugned order is set aside. Civil Misc. Application No. 131 of 2016 is allowed. As the Appeal before the First Appellate Court is filed in 2016, the First Appellate Court is requested to expedite the hearing of the Appeal. It is made clear that this decision will enure to the benefit of the appellant No.2 only.

8. In view of disposal of the Second Appeal, Civil Application does not survive and the same stands disposed of accordingly.

(M.S.KARNIK, J.)

Urmila P. Ingle Digitally signed
by Urmila P. Ingle
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