

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO. 715 OF 2018

ALONGWITH

CIVIL APPLICATION NO. 2049 OF 2015

Mr. Janardan Budhya Pardeshi
(Thr. POA, Mr. Avinash Janardhan
Pardeshi) and Ors.

.....Appellants

V/s.

Mr. Krushna Ragho Pardeshi and Ors.

....Respondents

* * * *

Mr. Nachiket V. Khaladkar, Advocate for the appellants.

Mr. Anand Shivaji Patil, Advocate for respondents no.1 to 3.

CORAM : SANDEEP K. SHINDE, J.

Monday, 7th January, 2019.

P.C. :

1. This appeal is preferred by the plaintiffs whose First Appeal was dismissed by the learned District Judge, Raigad, Alibaug having found the appeal was not presented within the period of limitation. In other words, the appellant's application for condonation of delay being Civil Miscellaneous Application No. 27 of 2011 was dismissed by

the learned District Judge vide order dated 1st March, 2014.

2. Heard learned Counsel for the parties.

3. Perused the impugned order. The First Appeal being a substantive right, only on the ground of delay of 35 days appellant cannot be non-suited. The learned Appellate Court has not accepted the ground which caused the delay in preferring the First Appeal, in as much as the appellant had not produced the Medical Certificate of his illness. Be that as it may, the First Appeal being a substantive right, I am inclined to allow this Appeal subject to cost of Rs.10,000/-.

4. The appellants are directed to pay Rs.10,000/- to the respondents or to the Advocate for the respondents herein within a period of 2 weeks from today. The payment of costs is a condition precedent, subject to which the impugned order is quashed and set aside.

5. The appeal is allowed. The Registrar of the District Court, Raigad is directed to register the Civil Appeal filed by the appellant against the decree dated 29th November, 2010 in Regular Civil Suit No. 43 of 2006 on

producing the proof of payment of costs and to deal with the same in accordance with law. The appeal is disposed off.

6. The learned Appellate Court is directed to hear the Appeal expeditiously.

7. In view of disposal of the Appeal, the Civil Application does not survive. The same also stands disposed of.

(SANDEEP K. SHINDE, J)