

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

**SECOND APPEAL NO.148 OF 2018
ALONG WITH
CIVIL APPLICATION NO.491 OF 2017**

M/s.Bhagwan Palav & Sons .. Appellant/Applicant
Vs.

Shashikant Ganpatrao Bhosale & Anr. .. Respondents

Mr.U.B. Nighot for the appellant/applicant.
Ms.Manjiri S.Parasnis for the respondents.

CORAM : R.D.DHANUKA, J.

DATE : 9th September 2019

P.C.:

. By this second appeal filed under Section 100 of the Code of Civil Procedure, 1908, the appellant (original defendant) has impugned the order dated 10th October 2016 passed by the learned District Judge-10, Pune in Misc. Civil Application No.945 of 2016 refusing to condone delay in filing appeal against ex parte judgment and decree dated 28th November 2000 passed by the 6th Civil Judge, Junior Division, Pune in Regular Civil Suit No.1877 of 1991. The appellant was the original defendant in Regular Civil Suit No.1877 of 1991 which was decreed by the trial Court in the year 2000.

2. It is the case of the appellant that the appellant came to know about such decree only in the year 2005 when the execution application filed by the original appellant being Regular Darkhast No.5 of 2005 was served on the appellant. From 2005, the appellant was

allegedly defending the said ex parte decree before the Executing Court. In the said Regular Darkhast No.5 of 2005, the Executing Court passed an order. The said order was impugned by the appellant by filing Civil Revision Application bearing No.282 of 2014 before this Court.

3. By an order dated 18th August 2016, this Court dismissed the said civil revision application. The appellant thereafter filed an appeal before the District Court and filed an application for condonation of delay of about 16 years in filing the said appeal against the said ex parte decree in Regular Civil Suit No.1877 of 1991. The learned District Judge dismissed the said Regular Civil Appeal on the ground that no case was made out for condonation of delay of 16 years and rejected the said application for condonation of delay by an order dated 10th October 2016.

4. Mr.Nighot, learned counsel for the appellant submits that his client was under a bonafide belief and was defending the ex parte decree before the Executing Court from 2005 to 2016 and thus the learned District Judge ought to have condoned the delay of 16 years in filing appeal.

5. Learned counsel invited my attention to the order dated 18th

August 2016 passed by Shri Justice N.M.Jamdar in Civil Revision Application No.282 of 2014 against the order dated 26th November 2013 below Exhibit 26 in Regular Darkhast No.5 of 2005 and would submit that by the said order, this Court granted liberty to the appellant to file appeal against ex parte decree passed by the learned trial Judge and thus continued the relief granted by this Court in Civil Revision Application No.282 of 2014. He submits that the appellant has good chances of succeeding in appeal preferred before the District Judge against ex parte decree passed by the learned trial Judge.

6. This Court in Civil Revision Application No.282 of 2014 passed a detailed order while rejecting the said civil revision application and held that the Executing Court could not go beyond the decree passed by the learned trial Judge. This Court, after dismissing the said Civil Revision Application, continued the ad-interim relief granted by this Court in civil revision application for a period of four weeks. The said order does not indicate that this Court had granted liberty to the appellant to file appeal against ex parte decree passed by the learned trial Judge.

7. A perusal of the order passed by the learned District Judge-10, Pune in Misc. Civil Application No.945 of 2106 clearly indicates that learned District Judge has considered this aspect in great detail and

rendered a finding of fact that no case was made out for condonation of delay of 16 years in preferring the appeal impugning the order passed by the learned trial Judge.

8. In my view, opposing the execution application before the learned trial Judge for 16 years itself was not in good faith and was without due diligence. The Executing Court even otherwise could not have gone beyond the ex parte decree passed by the learned trial Judge which had attained finality. No case is made out in this appeal. No substantial question of law arises. Appeal is devoid of merit and is accordingly dismissed. In view of dismissal of the appeal, civil application inter alia praying for stay does not survive and is accordingly dismissed. No order as to costs. Application for continuation of ad-interim relief is rejected.

R.D.DHANUKA, J.