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

**SECOND APPEAL (ST) NO. 20687 OF 2018
WITH
CIVIL APPLICATION (ST) NO. 20695 OF 2018
WITH
CIVIL APPLICATION (ST) NO. 20689 OF 2018**

Prakash Daulatrao Nalavade

.....Appellant

V/s.

Smt. Vijaya Daulatrao Nalavade
and others

.....Respondents

Mr. Saurabh M. Railkar for the appellant
Ms. Chaitrali Deshmukh for respondents**CORAM : NITIN W. SAMBRE, J.****DATE : FEBRUARY 17, 2020.****P.C.**

By consent, Second Appeal is taken for final disposal.

2] Respondent-plaintiff initiated a Suit for partition of a dwelling house.

3] The common ancestor namely Daultrao expired in 1986 leaving behind two sons, three daughters and wife as successors.

4] Since the partition was opened in 1986, by considering notional partition immediately before the death of Daulatrao, the Court below initially carved out shares of two sons, Daultrao himself and his wife.

5] As such, the Trial Court in the backdrop of consent extended by brothers, except present appellant, decreed the Suit inspite of an embargo under Section 23 of the Hindu Succession Act (Hereinafter referred to as 'the Act' for the sake of brevity) in the wake of consent extended by brothers.

6] The Lower Appellate Court partly allowed the Appeal. As such, this Second Appeal.

7] Appeal is barred by limitation as there is delay of two years and 20 days for condonation of which no sufficient cause is

disclosed. Apart from above, there is application moved by the appellant for condonation of delay for setting aside abatement in bringing on record legal heirs of respondent no. 4.

8] Learned counsel for original-plaintiff Ms. Deshmukh opposed the claim for condonation of delay as according to her, applicant is negligent in diligently pursuing the proceedings at every stage. As such, delay caused is intentional and not bonafide. No sufficient cause in support thereof is disclosed.

9] Though learned counsel for the applicant-appellant has demonstrated the cause in support of condonation of delay as that of ill health of his lawyer, the fact remains that lawyer was not well since 2012 whereas Appeal came to be partly allowed on March 18, 2016. As such, ill health of the lawyer was well within the knowledge of the appellant since 2012 and the appellant should have been diligent enough in pursuing the present proceedings.

10] Apart from above, fact remains that but for the appellant, other

two brothers have consented for carving out share in favour of plaintiff-respondent in a dwelling house inspite of embargo as is claimed to be created under Section 23 of the Act.

11] As such, both the Courts below have concurrently held that respondent-plaintiff is entitled for share in the property.

12] As far as claim of the opposition on the point of law which is sought to be relied based on Section 23 of the Act is concerned, appellant has not canvassed said issue by filing written statement before the Court below. Rather Court can take note of the fact that Section 23 of the Act stood omitted from the Statute book on September 9, 2009.

13] As the original plaintiff has remained unmarried and admittedly proviso to Section 23 of the Act provides for right of residence, in the aforesaid background, in my opinion, Second Appeal also does not involve any substantial question of law which warrants consideration.

14] As such, Second Appeal is liable to be dismissed on both counts i.e. barred by limitation and also on merit. As such, application for condonation of delay so also Second Appeal stand dismissed.

15] In view of dismissal of Second Appeal, Civil Applications also stand disposed of.

[NITIN W. SAMBRE, J.]