

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

SECOND APPEAL NO. 191 OF 2019

Sachin Yashwant Satavekar ... Appellant

V/s.

Ananda Vithu Satavekar & Ors. ... Respondents

...

Mr. Bhushan Walimbe i/b. Mr. Shashank P. Borade, for the Appellant.

Mr. Tejas Hilage, for the Respondent Nos. 1 & 2.

CORAM: SMT. SADHANA S. JADHAV, J.

DATED : 21st JANUARY, 2020.

P.C:-

1. The appellant herein impugns the order dated 26th July, 2018 passed by the District Judge, Kolhapur thereby, rejecting the application seeking condonation of delay in filing the First Appeal, challenging the judgment and order passed by Civil Judge, Junior Division, Kagal in Regular Civil Suit No. 72 of 2009 dated 9th October, 2014.

Sonali Patil

2. There is delay of one year and four months in filing the appeal. The First Appellate Court was of the opinion that the appellant had failed to show sufficient cause for the delay that had occurred in filing the appeal and that existence of sufficient cause would be the condition precedent for the exercise of discretion under Section 5 of the Limitation Act. It was the case of the appellant that the suit was instituted on 27th April, 2009. During the pendency of the suit, the parties had executed certain agreements dated 19th June, 2013 and 21st August, 2015. The specific contention of the appellant therein that since, there was an agreement between the parties and there was every hope for settlement, they had constrained themselves from filing the First Appeal immediately. The learned Court has arrived at a conclusion that the said agreements were not proved, rather the contents of the said agreement are not proved and therefore, the application seeking condonation of delay has been rejected. The issue that falls for determination is as to whether it would be necessary to prove the contents of the agreement between the parties to show sufficient cause for condonation of delay. The agreement was dated 19th June,

2013, the execution of agreement was proved. It would not be necessary to prove the contents of the agreement since, the suit was not based upon the agreement. It would not be necessary to take pedantic approach as far as condonation of delay is concerned and the appellant would be entitled to an opportunity to challenge the impugned judgment by exercising his statutory right.

3. Learned Counsel Mr. Hilage vehemently opposed the condonation of delay and remand of the matter to the First Appellate Court on the ground that the contents of the agreement were not proved and neither it was proved that the original defendant was in any way a signatory of the said agreement.

4. The First Appellate Court shall decide the legality of impugned judgment passed by the First Court dated 9th October, 2014 and in the interest of justice, the appellant would be entitled to the statutory right of appeal. The Second Appeal is allowed to the limited extent. The matter is remanded to the

First Appellate Court i.e. District Judge, Kolhapur. The order dated 26th July, 2018 passed by the District Judge, Kolhapur is hereby quashed and set aside. The learned District Judge, Kolhapur to decide the appeal on its own merits and contentions of the parties are kept open.

5. The matter is restored to the file of District Judge, Kolhapur on depositing the cost of Rs.1,000/- to be paid within four weeks from today. The parties to remain present before the District Judge, Kolhapur on 5th March, 2020. Second Appeal is allowed in the above terms and stands disposed of.

(SMT. SADHANA S. JADHAV, J.)