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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

SECOND APPEAL No. 718 OF 2019

Vilas Baburao Holkar ... Appellant
Vs.
Anis Ismail Kazi ... Respondent

Mr. Nikhil Wadikar i/b Nandu Pawar, for the Appellant.

Mr. S. N. Chandrachood, for Respondent.

CORAM : C. V. BHADANG, J.

DATE : MARCH 9, 2020

PC :

1. The challenge in this appeal is to the order dated 3rd April, 2019 passed by the learned District Judge-2, Baramati in Civil Misc. Application No. 27 of 2015. By the impugned order, the learned District Judge has refused to condone a delay of over 11 years caused in filing the first appeal, challenging the judgment and decree dated 6th April, 2004 passed by the learned Civil Judge, S. D. Baramati in Special Civil Suit No. 56 of 2000. That was a suit for specific performance filed by the respondent, which has been decreed.

2. Indisputably, the said decree is already executed and a sale-deed is executed in favour of the respondent, somewhere prior to the year 2005.

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3. The case made out by the appellant for condonation of delay is that his father, who was attending the case, had suffered “some problem and lost the memory for certain period”. According to the Appellant, when he intended to obtain a loan from a financial institution, he obtained a 7-12 extract of the suit field on 1st February, 2015 and it is at this time, that the appellant, for the first time came to know that name of the respondent has been entered in the 7-12 extract as the owner.

4. Although the appellant claims that he got knowledge of the decree somewhere in February, 2015, his application states that he applied for certified copy of judgment and decree on 6th April, 2004 and obtained it on 13th February, 2015, which is not acceptable. The record discloses that the appellant was appearing in the execution proceedings.

5. A perusal of the order shows that in fact an opportunity was given to the appellant to lead evidence, insofar as the grounds on which condonation of delay was sought. However, the appellant had filed pursis (Exhibit 14) stating that he did not want to lead any evidence. Thus, the ground about alleged medical condition of the father of the appellant has also gone unsubstantiated.

6. There is a gross delay of more than 11 years, inasmuch as

the decree passed on 6th April, 2004 was sought to be challenged for the first time in February, 2015. It is now well settled that the courts can take a liberal view while condoning a delay of short a duration, however, a stricter approach is necessary where the delay is gross or of substantial nature, as is in the present case. Not only that, the decree has already been executed and thus, a vested right is created in favour of the respondent on the basis of the sale-deed, which cannot be legally interfered with.

7. The learned counsel for the appellant submitted that the appeal involves substantial questions of law, as set out in para 1 of the appeal memo. The record discloses that the suit had gone uncontested and the decree of the trial court was passed *exparte*. Considering the overall circumstances, the appeal does not involve any substantial question of law. The impugned order does not suffer from any infirmity. The appeal is accordingly dismissed, with no order as to costs.

Sd/-
C. V. BHADANG, J.