

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

21 CIVIL APPLICATION NO.12382 OF 2015
IN SAST/33667/2012

SAYED SAIDODDIN SAYED NASER
VERSUS
MOHAMMAD GULAM AFZALKHAN S/O NURULLAKHAN AND ANR

...
Mr. A.B. Dhongade, Advocate for the applicant
...

CORAM : SMT. VIBHA KANKANWADI, J.

DATE : 02nd AUGUST, 2021.

PER COURT :

1 Present application has been filed for getting delay of 11 days condoned in filing Second Appeal.

2 Heard learned Advocate Mr. A.B. Dhongade for the applicant.

3 At the outset, in normal circumstance, taking into consideration the duration of the delay this Court would be definitely condoned it. However, important point to be noted is that present applicant is the original plaintiff and respondents are the original defendant Nos.1 and 2. Present plaintiff had filed Regular Civil Suit No.45/2004 before Civil Judge Senior Division, Basmatnagar for permanent injunction. It came to be decreed on 22.04.2009 against both the defendants. Defendant No.1 filed Regular Civil

Appeal No.37/2009 before District Court, Basmatnagar. That appeal was heard by learned District Judge-1, Basmatnagar and it was also allowed on 05.09.2012. The Judgment and Decree passed by the learned Trial Judge was set aside and the said suit filed by the present applicant came to be dismissed. Now, the original plaintiff wants to challenge the said decree in Second Appeal. However, during the pendency of the present applications when the notices were issued to the respondent No.1, it was returned unserved, as reported to be dead on 23.03.2017. By order dated 21.04.2017 this Court had directed that the steps should be taken by 09.06.2017. They were not taken, and therefore, by order dated 09.06.2017 one more chance was given and it was directed that the steps should be taken within a period of four weeks from that day, failing which the appeal would stand abated against the said respondent, without further reference to the Court. That order passed by this Court on 09.06.2017 is not yet got set aside by the applicant. Respondent No.1 herein was the defendant No.1, against whom also the present applicant-plaintiff had sought injunction. Now, in absence of his legal representatives, this Court cannot proceed, and therefore, under this circumstance, even though the delay was of only 11 days, it cannot be condoned. Application, therefore, stands rejected.

(Smt. Vibha Kankanwadi, J.)