

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

**CIVIL APPLICATION NO. 490 OF 2016
IN
FIRST APPEAL (STAMP) NO. 3187 OF 2016**

Kalidas Vishnu Bagal	... Applicant
Vs.	
Rahul Vilas Bagal	... Respondent

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Mr. Shubham K. Kanade i/b. Mr. Umesh Mankapure for the Applicant.
Ms. Akanksha Helaskar i/b. Mr. Ashutosh Kulkarni for the Respondent.

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CORAM: MADHAV J. JAMDAR, J.

DATE : 18th SEPTEMBER, 2021.

P. C. :-

1. Heard Mr. Shubham Kanade i/b. Mr. Umesh Mankapure, learned counsel appearing for the applicant and Ms. Akanksha Helaskar, learned counsel appearing for the respondent.
2. This Civil Application is for condonation of delay of 115 days in filing the First Appeal.
3. Mr. Kanade, learned counsel appearing for the applicant submitted that the impugned order is dated 8th July, 2013 passed by learned Joint Civil Judge, Senior Division, Sangli in Miscellaneous Civil Application No. 172 of 2012.
4. The said Miscellaneous Civil Application No. 172 of 2012 was

filed seeking probate of Will dated 18th May, 2012 executed by deceased Vishnu Shankar Bagal, grandfather of the respondent. The said Miscellaneous Civil Application No. 172 of 2012 was filed by the respondent without impleading any party to the said probate proceeding. The applicant/appellant is son of deceased Vishnu Shankar Bagal and therefore, he is class-I heir and should have been impleaded as party to said Miscellaneous Civil Application.

5. Mr. Kanade submitted that the applicant before approaching this Court has filed Civil Miscellaneous Application No. 171 of 2014 before the learned Ad-hoc. District Judge-1, Sangli. However, by order dated 12th January, 2016 passed below Exhibit-1 in Civil Miscellaneous Application No. 171 of 2014, original application alongwith appeal memo was returned to applicant for filing the same before this Court. The said order was passed in view of ruling of Bombay High Court reported in **[2014 (3) Bom. C.R. 641] Nola Janathan Ranbhise Vs. Union of India & Ors.** Thereafter immediately on 28th January, 2016 the present First Appeal is preferred.

6. On the other hand, Ms. Akanksha Helaskar, learned counsel appearing for the respondent submitted that the delay is not only of 115 days but much more as impugned order in this appeal is dated 8th July, 2013 and appeal was lodged on 28th January, 2016. She further submitted that no sufficient reasons are set out in the Civil Application and therefore, the same be dismissed.

7. Perusal of papers annexed to the Civil Application as well as to the First Appeal shows that the respondent filed application seeking

probate bearing Miscellaneous Civil Application No. 172 of 2012 on 3rd September, 2012 in the Court of Civil Judge, Senior Division, Sangli. The said Miscellaneous Civil Application was filed seeking probate of the Will of Vishnu Shankar Bagal, grandfather of the respondent. It is the contention of the applicant that he is son of the deceased Vishnu Shankar Bagal. He is class-1 heir of deceased Vishnu Shankar Bagal, therefore, he should have been made party to the probate proceeding. It appears that none was impleaded as respondent to the said probate proceeding. It further appears that the applicant after receipt of information regarding the impugned order dated 8th September, 2013 passed in Miscellaneous Civil Application No. 172 of 2012 by learned Joint Civil Judge, Senior Division, Sangli preferred Civil Miscellaneous Application No. 171 of 2014 before the District Judge, Sangli. The said application was filed immediately after receipt of information regarding said order dated 8th July, 2013. The learned Ad-hoc District Judge-1, Sangli returned the original application alongwith appeal memo to the applicant for the purpose of filing the same before this Court by order dated 12th January, 2016 and the present First Appeal is lodged on 28th January, 2016.

8. This Court by order dated 8th February, 2016 issued rule in this Civil Application and made the same returnable after 4 weeks. The learned counsel appearing for the respondent sought time on 26th October, 2016 to file reply and the same was granted and this Civil Application was adjourned to 5th December, 2016. In spite of the same, till date no reply is filed to the present Civil Application by the respondents. Therefore, the averments in the Civil Application have remained uncontroverted. That apart it is to be noted that

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admittedly the applicant was not made party to the said probate proceeding. Prima facie applicant is class-1 heir and he should have been impleaded as party to the said Miscellaneous Civil Application No. 172 of 2012 seeking probate of Will dated 18th May, 2012 of deceased Vishnu Shankar Bagal i.e. grandfather of the respondent and father of the applicant.

9. In the facts and circumstance of this case, the Civil Application is allowed by condoning the delay in filing the First Appeal.

10. The Civil Application is disposed of accordingly.

(MADHAV J. JAMDAR, J.)