

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

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WRIT PETITION NO.4182 OF 2018

Salim Abbasbhai Khatib

..Petitioner

Versus

Amir Abdul Khatib (Shaikh) and Ors.

..Respondents

Mr. Murlidhar L. Patil, for the Petitioner.

Mr. Surel. S. Shah, for the Respondent Nos.1 & 3 to 9.

CORAM : NITIN W. SAMBRE, J.

DATE : 17th MARCH, 2022

PC.

1. RCS No.247 of 1998 came to be decreed on 8th August, 2003, in which the petitioner was impleaded as defendant. Since the petitioner failed to take steps in the suit, he claimed to have taken out proceedings for setting aside said decree under Order IX Rule 13 of the CPC. The said proceedings were also dismissed as decree under challenge was not passed ex-parte.

2. As a consequence, petitioner preferred appeal along with prayer for condonation of delay. The Appellate Court dismissed the application for condonation of delay as the prayer was not supported by the bonafide reasons caused in filing the appeal at belated stage. As such, this petition.

3. Mr. Patil would urge that the petitioner has statutory

substantive right of preferring an appeal. The delay was caused as the petitioner was pursuing earlier proceedings before the wrong forum which were in the form of setting aside decree under Order IX Rule 13 of the CPC. As such, according to him, if permitted to prosecute the appeal on merit by putting the petitioner to reasonable condition of cost etc., the property which the petitioner has lost by virtue of the decree under challenge can be saved so as to make him survive.

4. The prayer is opposed by Mr. Surel Shah, learned counsel appearing for the respondents/decreed holder.

5. Admittedly, the petitioner appeared in the suit proceedings and chosen not to contest the same on merit. That being so, decree in question cannot be termed as an ex-parte decree. The petitioner perhaps under the wrong perception taken out proceedings under Order IX Rule 13 of the CPC which were dismissed repeatedly long back.

6. In this background, if we appreciate the cause cited in support of prayer for condonation of delay, I hardly noticed any convincing reason but for blaming lawyer in not conducting proceedings diligently before the Court below. The petitioner though has engaged a lawyer to conduct proceedings before the Court below, is equally responsible to assist the lawyer in conducting proceedings which he has failed to inordinate long delay

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is at all not explained. That being so, I hardly see any bonafide ground which warrants consideration of the prayer of the petitioner for condonation of delay.

7. As such, petition lacks merit, stands dismissed.

[NITIN W. SAMBRE, J.]