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

SECOND APPEAL NO.750 OF 2017

Dattu Bhavani Bodke
R/at Talawade Trambak,
Taluka Trambakeshwar,
District Nashik

... Appellant

V/s.

Satu Ramkrishna Bodke
R/at Talawade Trambak,
Taluka Trambakeshwar,
District Nashik

... Respondent

Mr. Drupad S. Patil for the Appellant.

Mr. Sugandh Deshmukh with Mr.Irvin D'Souza for the Respondent.

CORAM : S. M. MODAK, J.

DATED : 10TH AUGUST 2022.

JUDGMENT :

1. Heard Mr.Drupad Patil, learned Advocate for the Appellant-Defendant and Mr.Sugandh Deshmukh, learned Advocate assisted by Mr.Irvin D'Souza for the Respondent-Plaintiff.

2. This Court as per the order dated 29th September 2017 has admitted the Appeal by framing following substantial question of law :

(i) Whether the First Appellate Court erred in not condoning the delay of 24 days in filing the Appeal impugning the order passed by the learned Trial Court despite the Appellant having shown sufficient cause for the delay in their Misc. Civil Application No.26 of 2015 ?”

3. The Second Appeal was directed to be fixed for hearing and final disposal. Accordingly, I have heard learned Advocates for both the parties.

4. The Plaintiff's suit for declaration and permanent injunction came to be dismissed by the trial Court, Nashik as per the judgment dated 2nd December 2014. According to the Plaintiff there was delay of 2 days in preferring the First Appeal whereas according to the First Appellate Court, the delay was of 24 days. So far calculation of 24 days as set out by the First Appellate Court was not disputed by both the sides.

5. The Plaintiff offered explanation of financial crunch as reason for not preferring the First Appeal in time. It was not accepted by the First Appellate Court that's why the present Second Appeal. It is already held by the Hon'ble Supreme Court that the order refusing to condone delay caused in preferring First Appeal also amounts to decree and amenable to exercise of a jurisdiction under section 100 of the Code of Civil Procedure.

6. The relevant dates are as follows :-

Sr. No.	Details of document	Date
(i)	Date of trial Court Judgment	2nd December 2014
(ii)	Date of Applying certified copy	9th December 2014 (after gap of 7 years)
(iii)	Date of issuance of certified copy	20th December 2014
(iv)	Date of filing delay condonation application	5th February 2015

7. The above facts are not disputed. According to learned Advocate for the Defendant, poverty cannot be considered as good ground for condonation of delay. Learned Advocate for the Respondent has

supported the reasoning given by the First Appellate Court in para 4 of the impugned order. Whereas according to the Appellant, the First Appellate Court was too technical in considering the prayer for delay condonation. According to him the litigant may not be denied of right to approach the First Appellate Court and the First Appeal has to be admitted as a matter of right. I have read the reasoning given in para 4. After reading them, it is very clear that the First Appellate Court was determined in refusing to condone the delay. The First Appellate Court had given following reasons :-

- (a) The period of 7 days spent on filing certified copy of the judgment has to be included while computing period of 30 days and rightly so.
- (b) The Appellant has not given the details when he contacted the Advocate and by which mode, after obtaining certified copy.
- (c) The Appellant has not given the dates and time when he contacted his Advocate.
- (d) Even he has not mentioned name of the Advocate.
- (e) The Appellant was well aware about period of limitation particularly when he had engaged an Advocate in the trial Court.

8. For above reasons, the First Appellate Court has passed the impugned order. After reading them it appears that the First Appellate Court has lost site of the fact that the Court was not dealing with criminal trial but was dealing with a civil proceedings. It is not expected that all averments need to be proved just like proving an offence beyond reasonable doubt. When the Appellant has pleaded that he has contacted Advocate, merely offering the name of Advocate is by way giving better particulars. When the Appellant has stated

that he has contacted Advocate, the conduct in not giving mode of contact does not make the information unreliable. By not mentioning the date and time does not makes the case of Appellant unbelievable.

9. So for above reasons this Court feels that the First Appellate Court has taken too technical view in dealing with the Application. There is explanation of financial difficulty offered by the Appellant. It is true that nothing can be done without raising money. The First Appellate Court has lost site of this basic requirement. Hence this reasoning cannot be justified and hence the order passed therein needs interference. Hence substantial question of law is answered in the affirmative. Hence following order is passed :

O R D E R

- (a) Appeal is allowed. The order dated 10th January 2016 passed by the Adhoc District Judge in Civil Miscellaneous Application No.25 of 2015 is set aside.
- (b) Civil Miscellaneous Application No.25 of 2015 is allowed and delay of 24 days is condoned.
- (c) The Court of the District Judge, Nashik is directed to register the First Appeal of the Appellant if there are no other office objections.
- (d) The Appellant is directed to appear before the First Appellate Court on 5th September 2022.

10. Appeal is disposed of in the aforesaid terms. There will be no order as to costs.

(S. M. MODAK, J.)