

Ajay

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 5384 OF 2016

Manish Chintamani Tonde

.. Petitioner

Versus

Dhananjay Dagadu Tonde and Ors.

.. Respondents

-
- Mr. Kuldeep U. Nikam, Advocate for Petitioner.
 - None for Respondents.
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CORAM : MILIND N. JADHAV, J.

DATE : FEBRUARY 01, 2023.

P.C.:

1. Heard Mr. Nikam, learned Advocate for Petitioner. None appears for Respondents though served.

2. Considering the date of the impugned order as also the date of the Civil Suit pending before the learned Trial Court, this matter cannot be protracted any longer.

3. Perused the order below Exhibit – 1 dated 21.04.2015 which is impugned in the present Writ Petition. Application was filed by the Petitioner for seeking condonation of delay and setting aside the *ex-parte* decree passed against him on 17.01.2014 in Regular Civil Suit No.219 of 2011. The delay was of 100 days. The explanation given by the Petitioner has been considered by the learned Trial Court in paragraph No.6 of the impugned order, the same has been noted and

has been rejected by the learned Trial Court by holding that the reason attributable to the delay could not be said to be beyond the control of the Petitioner / Applicant. The learned Trial Court has held that the Application for setting aside the *ex-parte* decree was in a partition suit which came to be decreed by the learned Trial Court and in that view of the matter it was to the knowledge of the Petitioner / Applicant.

4. Considering that a substantive right of appeal of the Petitioner is taken away by the *ex-parte* decree passed by the learned Trial Court, it would affect the right and entitlement of his share. The delay of 100 days in filing the Application for setting aside of the *ex-parte* decree therefore deserves to be condoned. Hence, the delay in filing the Application for setting aside the *ex-parte* decree dated 17.01.2014 stands condoned.

5. In that view of the matter, the order below Exhibit – 1 to the extent of condoning the delay stands allowed. Exhibit – 1 is restored to the record and file of the learned Trial Court for consideration of the Application for setting aside the *ex-parte* decree, which shall be heard and decided by the learned Trial Court on its own merits and strictly in accordance with law after hearing the parties.

6. With the above directions, Writ Petition is disposed.

[MILIND N. JADHAV, J.]

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