

Nikita

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

**SECOND APPEAL NO.716 OF 2023
WITH
INTERIM APPLICATION NO.17974 OF 2023
IN
SECOND APPEAL NO.716 OF 2023**

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Rajaram Govind Kalbhor

... Appellant

V/s.

Ganpat Mugutrav Kalbhor

... Respondents

Mr. Girish R. Agrawal a/w Ms. Naina Boraste for the
Appellant-Applicant.

CORAM : AMIT BORKAR, J.

DATED : DECEMBER 21, 2023

PC.:

- 1.** The Appellate Court by impugned judgment and decree rejected appellant's application for condonation of delay of three and half years challenging the decree for partition.
- 2.** The respondent filed suit for partition. In the said suit, the appellant appeared through advocate. However, the advocate filed a pursis of "no instructions". The record indicates that the Trial Court issued notice to the appellants, according to the appellant such notice was never received by the appellant. The Trial Court passed a decree on 1st October 2009.
- 3.** The appellants filed appeal challenging decree for partition on 20th March 2013.

4. On perusal of the impugned judgment, it appears that the appellant was served with notice of execution of decree and the appellants appeared before the Executing Court on 5th November 2011. Therefore, undisputedly, the appellant had notice of decree atleast on 5th November 2011. Even, thereafter the appeal is filed only on 20th March 2013. Only explanation furnished is that one of the appellant who was looking after the Court proceedings was unwell. Considering the nature of decree and the explanation furnished, it cannot be accepted as sufficient cause within the meaning of Section 5 of the Limitation Act, 1963.

5. The lower Appellate Court, therefore, was justified in rejecting the application. The view adopted by the Appellate Court cannot be termed as perverse. Hence, no substantial question of law arises for consideration.

6. The second appeal stands dismissed. No costs.

7. In view of dismissal of second appeal, the interim application stands disposed of as infructuous.

(AMIT BORKAR, J.)