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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
SECOND APPEAL NO. 137 OF 2015
WITH
CIVIL APPLICATION NO. 271 OF 2015
IN
SECOND APPEAL NO. 137 OF 2015**

Shri Tukaram Hirasa Pawar ... Appellant/Applicant

vs.

Dnyaneshwar Vishnu Pawar and Ors ... Respondents

Mr. Surel S. Shah i/b. Rushabh D. Phade, for Appellant.

Mr. Samir Kumbhakoni for Respondent nos. 1 and 14.

CORAM : GAURI GODSE, J.

DATED : 19th JUNE 2024

ORDER:

1. This Second Appeal arises out of an order dismissing the appellant's application for condonation of delay in filing an appeal against the decree for partition. The suit for partition was filed in 2002 and partly decreed on 21st April 2010. After more than three years, the appellant challenged the decree by filing an appeal along with the application for condonation of delay. The said application is dismissed, hence this Second Appeal.

2. Learned counsel for the appellant submitted that the decree for partition passed by the Trial Court would show that the shares

are not appropriately determined as the suit was filed by the son of the second wife of the original holder. He submits that though the delay was explained, the reasons for the delay are not properly appreciated inspite of the documentary evidence produced on record. He, therefore, submits that misappreciation of the documents on record is the substantial question of law required to be determined by this Court. Hence, the Second Appeal be admitted on the said ground.

3. Learned counsel for respondents nos. 1 and 14 submitted that the appellant accepted the decree for partition and alienated his share by executing the sale deed. He submits that even the documents produced on record in support of the reasons for delay do not support the justification for more than three years of delay caused in filing the appeal. He submits that after enjoying the results of the decree, the appellant challenged the decree with a malafide intention by filing an application for condonation of delay. Hence, the reasons for the delay are not genuine and, therefore, rightly disbelieved by the First Appellate Court. He submits that the Second Appeal does not raise any substantial questions of law.

4. I have perused the papers. Considered the submissions made on behalf of both the parties. It is not disputed that the decree

for partition was accepted by the appellant and that the share allotted to him was sold before filing the Appeal.

5. The First Appellate Court has considered the reasons given for the condonation of delay. The appellate court has also examined the documentary evidence produced to support the justification for for delay. After examining the documentary evidence on record, the First Appellate Court disbelieved the grounds raised for condonation of delay by holding that the same did not amount to sufficient ground for condonation of delay. The grounds raised regarding the disproportionate division of property cannot be accepted as a ground for condonation of the delay. The First Appellate Court, after examining the evidence, recorded the findings on facts and disbelieved the grounds for delay condonation. The grounds raised on behalf of the appellant would require re-appreciation of the facts and evidence, which is not permissible under Section 100 of the Civil Procedure Code, 1908.

6. The Second Appeal does not raise any substantial question of law. Hence, the Second Appeal is dismissed. In view of the dismissal of the Second Appeal, the Civil Application is dismissed as infructuous.

(GAURI GODSE, J.)