



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

CIVIL APPLICATION NO. 33 OF 2023
IN
SECOND APPEAL (ST.) NO. 23557 OF 2018

Omkar Babasaheb Patil

... Applicant.

Versus

Smt.Sarojini Raigonda Patil (since deceased),
Through LRs. and Ors.

... Respondents.

Mr. Aniket P. Ranade, for the Applicant.

Mr. Rakesh Bhatkar, for the Respondents.

Coram : Sharmila U. Deshmukh, J.

Date : April 10, 2024.

P. C. :

1. Civil Application has been preferred for condonation of delay of 120 days caused in filing the present Appeal. There is no reply filed to the Civil Application. Learned counsel appearing for the Applicant submits that the judgment of the 1st Appellate Court was delivered on 5th January, 2018, however, the Advocate did not inform the Applicant about the passing of the judgment by the 1st First Appellate Court. He would further submit that it is only when the Applicant visited the District Court on 15th May, 2018, that he became aware of the passing of the impugned judgment dated 5th January, 2018. He would further

submit that the certified copy was received on 24th May, 2018, however, he could not engage an Advocate in Mumbai immediately due to the summer vacations. He would accordingly urge that sufficient cause has been shown for condonation of delay of 120 days.

2. *Per contra*, learned counsel appearing for the Respondent No.2 submits that negligence is writ large as the application was affirmed on 6th June, 2018 however the same has been filed only in the month of August, 2018.

3. Considered the submissions and perused the record.

4. It cannot be disputed that the appellant was duly prosecuting the proceedings not only before Trial Court but also before the 1st Appellate Court. It is well known that no litigant gains by delaying the matter and in fact it is in the interest of the Appellant, who was the original plaintiff to ensure timely steps are taken since his rights were affected by the concurrent findings. In the present case, the pleadings indicate that the Applicant was not made aware of the passing of the impugned judgment of 5th January, 2018 and that he became aware of the same only on 15th May, 2018. There is no reason to disbelieve the Applicant. As regards the submission that the application was affirmed on 6th June, 2018 and was filed on 10th August, 2018 the

same would in fact indicate that despite the Applicant being diligent and affirming the affidavit on 6th June, 2018, there is default on part of the Advocate while filing the said application for the reasons best known to the parties.

5. Considering that the delay is not such a collusal delay which cannot be condoned and there is sufficient explanation which has been tendered to condone the delay, the civil application deserves to be allowed and is hereby allowed. The delay of 120 days caused in preferring the second appeal is condoned. Civil Application stands allowed.

[Sharmila U. Deshmukh, J.]