



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO. 258 OF 2017

Sou. Kamlabai Jaiwant Waghmare
Since deceased through legal heirs
and Others.

...Appellants.

Versus

Nanda Shavrappa Koli and Others.

...Respondents.

Mr. R. S. Alange for the appellant.

Coram : Sharmila U. Deshmukh, J.

Date : January 19, 2024.

P. C. :

1. Being aggrieved by the judgment dated 7th January 2014 rejecting the application for condonation of delay, the original defendant is before this Court.

2. Regular Civil Suit No.10 of 1998 was filed by the plaintiff seeking partition and separate possession of the ancestral properties. The suit proceeded ex-parte as in spite of summons defendant nos. 2 and 3 failed to appear.

3. After a period of 6 years, an appeal came to be filed along with an application for condonation of delay. The application came to be

rejected on the ground that there is no evidence to show that the appellant was not served with summons.

4. Learned counsel appearing for the appellant submits that the First Appellate Court has erred in dismissing the application for condonation of delay as the same is required to be considered leniently. He would submit that explanation tendered in support of the application for condonation of delay was sufficient to condone the delay.

5. Considered the submissions and perused the record.

6. Under section 100 of the Code of Civil Procedure, 1908 this Court can exercise powers only in case where substantial question of law arises. In the present case, as to whether there was sufficient cause for condonation of delay is a question of fact and as such no substantial question of law arises. Appeal stands dismissed.

7. In view of the disposal of second appeal, pending application, if any, does not survive and the same is disposed of.

[Sharmila U. Deshmukh, J.]