

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

**SECOND APPEAL NO. 215 OF 2021**

**WITH**

**INTERIM APPLICATION NO. 1476 OF 2021**

Mr. Gajanan Ramchandra Adak

**...APPELLANT**

**V/S.**

Mr. Madhukar Ramchandra Adak

and Ors.

**...RESPONDENTS**

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**Mr. Rahul S. Kadam, for the Appellant.**

**Mr. Vilas B. Tapkir, for the Respondents.**

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**CORAM : SANDEEP V. MARNE, J.**

**Dated : 28 February 2024.**

**P.C. :**

1) By this Appeal, the Appellant challenges the Order dated 2 February 2021 passed by the District Judge-8, Pune rejecting Appellant's Civil Misc. Application No. 490 of 2019. The application was filed by the Appellant seeking condonation of delay of 13 months and 17 days in filing the Appeal before the first Appellate Court with a view to set up a challenge to the Decree of the Trial Court dated 14 February 2018 passed in Regular Civil Suit No. 1731 of 2013.

2) I have heard Mr. Kadam, the learned counsel appearing the Appellant and Mr. Tapkir, the learned counsel appearing for the Respondents.

3) After having considered the submissions canvassed by the learned counsel appearing for the parties, it is seen that the only reason pleaded by the Appellant in his application seeking condonation of delay of 13 months and 17 days is his old age of 72 years and his illness. The Appellant has further pleaded that he misplaced some important documents of Judgment and Decree in Regular Civil Suit No. 1731 of 2013 and made application for certified copies, collected the same and thereafter gave instructions to the advocate to draft the Appeal. However, no details nor any evidence was produced by the Appellant to show that he made any such application for issuance of certified copy of any documents.

4) Mere old age cannot be a reason enough to condone the delay unless it is proved that on account of old age, the Appellant was unable to perform day-to-day activities or to attend the Court. No concrete evidence is produced to show prolonged illness on the part of the Appellant which prevented him from lodging the Appeal in time.

5) Though this Court is not supposed to enter into the merits of the dispute between the parties, it would be necessary to refer to only one aspect from which an inference can be drawn about the real reason why the Appellant did not file Appeal within time. The suit was filed

by the Appellant's brother seeking partition of the suit property. The Trial Court has recorded a finding that during cross-examination, the Appellant admitted that all the siblings had  $\frac{1}{4}$  share in the suit property and that he was ready to give the same. This is exactly the Decree which is passed by the Trial Court. It is therefore unfathomable as to why the Appellant wanted to challenge the Decree after giving admission in the cross-examination to give  $\frac{1}{4}$  share to all his siblings. Be that as it may. I am not convinced that any sufficient cause was made out by the Appellant for condonation of delay in filing the Appeal. No substantial question of law arises in the Appeal. The Second Appeal is accordingly **rejected**.

6) With dismissal of the Second Appeal, Interim Application taken out for stay does not survive. The same also stands disposed of.

**SANDEEP V. MARNE, J.**

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