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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
INTERIM APPLICATION NO. 9754 OF 2024
WITH
SECOND APPEAL (ST) NO. 28505 OF 2023
WITH
SECOND APPEAL (ST) NO. 32936 OF 2023

Madhukar Hari Pawar ... Appellant/Applicant
Vs.
Vishwas Shankar Patil ... Respondent

Ms. Rukmini Khairnar for the Appellant / Applicant.
Mr. Sanjay Ghaisas for the Respondent.

CORAM : GAURI GODSE, J.

DATE : 9th SEPTEMBER 2024

ORDER :

Interim Application No. 9754 of 2024 in Second Appeal (St) No. 32936 of 2023

1. This interim application is for condonation of delay of 87 days in filing the Second Appeal. Learned counsel for the applicant submits that the reasons for delay and steps taken to file the Second Appeal are explained in paragraph 3 to 5. She submits that at the time of filing the Second Appeal against the decree for removal of encroachment

and possession, the applicant was advised to file the present Second Appeal against the decree for injunction.

2. She therefore submits that the delay occurred in filing the Second Appeal against the injunction decree is unintentional. She therefore submits that the delay be condoned and the appeal be heard on merits.

3. The respondent no. 1 is the original plaintiff who is represented through Advocate. Respondent no. 2 is the original defendant no. 1 against whom the decree for injunction is passed.

4. Learned counsel for respondent no. 1 opposes the condonation of delay. He submits that the explanation given in the application is not accepted. He submits that though the applicant was aware about the decree he failed to take steps to challenge the same. He submits that only after decree for possession of encroachment was passed the applicant has filed this Second Appeal.

5. I have perused the reasons stated in the application for condonation of delay. The reasons appear to be genuine and acceptable. For the reasons stated in the application, delay is condoned and application is allowed in terms of prayer clause (b).

Second Appeal (St) No. 32936 of 2023 and Second Appeal (St) No. 28505 of 2023

6. This Second Appeal (St) No. 32936 of 2023 arises out of concurrent judgments and decrees for injunction passed in favour of respondent no. 1. The Second Appeal (St) no. 28505 of 2023 arises out of concurrent judgments and decrees for removing encroachment and for possession.

7. I have heard the learned counsels for the parties in both the Second Appeals.

8. Learned counsel for the appellant on instructions submits that since the dispute between the parties is with regard to actual demarcation of the respective areas, the appellant would be agreeable to sort out the dispute if respondent no. 1 – original plaintiff is agreeable for an amicable settlement.

9. Learned counsel for the respondent no. 1 seeks time to take instructions.

10. List the Second Appeals under the caption “For Directions” on 18th October 2024.

[GAURI GODSE, J.]