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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
INTERIM APPLICATION NO. 14368 OF 2024
IN
SECOND APPEAL (ST) NO. 28827 OF 2024**

Jaiboon Babalal Bagwan ... Applicant/Appellant
Deceased through his Legal Heir
Bebi Babalal Bagwan

Vs.

State of Maharashtra and Others ... Respondents

Mr. Parth Katira a/w. Mr. Aniket Gole i/b. Mr. Nikhil Wadikar for the
Applicant/Appellant.

CORAM : GAURI GODSE, J.

DATE : 19th NOVEMBER 2024

ORDER :

1. Heard learned counsel for the applicant. This application is for condonation of delay of 12 years 7 months and 27 days in filing the appeal. The applicant claims to be heir and legal representative of original plaintiff. The suit for declaration and injunction filed by the original plaintiff was partly decreed. The trial court had rejected the prayer for declaration of title by way of adverse possession. However, it granted injunction protecting the plaintiff's possession.

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2. Respondent i.e. State Government challenged the decree by filing First Appeal. The First Appeal was allowed on 8th November 2011 and the trial court's decree is set aside and the suit is dismissed. It appears that in the meantime the original plaintiff expired. The Second Appeal is preferred by the applicant who claims to be one of the heirs and legal representatives of the deceased plaintiff.

3. Learned counsel for the applicant submitted that the reasons for the delay are explained in the application. Learned counsel for the applicant submits that the original plaintiff expired on 28th February 2021 at the age of 82. He submits that the plaintiff was residing along with the son of her real brother. He submits that due to her ill health the applicant was unable to look after the litigation. He submits that the original plaintiff or her nephew who was residing with her were never informed about the decision in the First Appeal. He further submits on 29th August 2024 the plaintiff's nephew received a letter from Municipal Council calling upon to remove the unauthorised construction. He submits that the said letter referred to the order passed in the First Appeal. Learned counsel thus submits that on receipt of the said letter the applicant learnt about the impugned decree and thereafter steps were taken to file Second

Appeal. He submits that in view of the aforesaid, there is delay in filing the appeal. He further submits that only due to lack of knowledge about the decision in the appeal preferred by the defendants, the original plaintiff or her heirs were unable to file the appeal within time.

4. I have perused the application. Though the application refers to ill-health of the original plaintiff, there are no reasons stated regarding steps taken by the original plaintiff to find out about the pending First Appeal. It is not the case of the applicant that the original plaintiff was unaware about the pendency of the First Appeal. The First Appeal was filed in the year 2007. The reasons regarding ill-health of the original plaintiff are sought to be supported by a medical certificate dated 12th September 2024. The certificate refers to the original plaintiff being under treatment since 2007 as an OPD patient till 2nd February 2021. The certificate does not refer to any serious illness. The application does not refer to any justifiable reason why the original plaintiff was unable to find out about the pendency of the First Appeal. Though, the reason of ill-health is stated, the medical certificate does not support the contention of any serious illness of the original plaintiff. The applicant has made allegation against the plaintiff's Advocate.

5. The application is bereft of any averments regarding steps taken by the original plaintiff to find out about pending First Appeal. There are no sufficient grounds raised in the application to justify delay of more than 12 years. The allegations made against the plaintiff's Advocate cannot be accepted as a justifiable ground. For want of any justifiable reasons in the application huge delay of more than 12 years cannot be condoned for the vague reasons stated in the application. Hence, the application is dismissed.

6. In view of dismissal of the application, Second Appeal also stands dismissed.

[GAURI GODSE, J.]