

MJ Jadhav

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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
SECOND APPEAL NO. 445 OF 2016
WITH
CIVIL APPLICATION NO. 1062 OF 2019
IN
SECOND APPEAL NO. 445 OF 2016**

Bassappa Rangappa Khot and Ors. ... Appellants/Applicants

vs.

Lingappa Rangappa Khot ... Respondent

Mr. Nagesh Chavan for the Appellants/Applicants.

Mr. Balwant V. Salunkhe for the Respondent.

CORAM : GAURI GODSE, J.

DATED : 4th FEBRUARY 2025

ORDER:

1. This second appeal is preferred by the defendants to challenge the dismissal of their application for condonation of delay of 4 years, 6 months and 10 days in filing the first appeal.

2. The first appeal was preferred by the appellants to challenge the trial Court's decree granting injunction restraining them from obstructing the plaintiff from carrying out repair to the suit property and further restraining them from encroaching upon the suit property.

3. Learned counsel for the appellants submits that the reasons for delay were explained by the appellant in paragraph Nos.2 and 3 of the application filed in the first appeal. He submits that the appellants had pleaded that they learnt about the trial Court's decree one month prior to filing of the first appeal. He submits that the trial Court's decree was an ex-parte decree, hence, they were unaware about passing of the decree. He, therefore, submits that there was no negligence on the part of the appellants and the delay was unintentional.

4. Learned counsel for the appellants, therefore, submits that the first appellate court ought to have taken a lenient view as dismissal of the application would cause serious prejudice to the appellant's rights in respect of the suit property.

5. Learned counsel for the respondent supports the impugned order. He submits that the appellants had appeared in the suit and filed written statement; hence, the reasons stated that they were unaware about the decree is not acceptable. He, thus, submits that in the absence of any justifiable reason for condonation of huge delay of more than 4 years, the appellant's application is rightly rejected by the first appellate court.

6. I have perused the papers of the second appeal. The

application for condonation of delay is filed by vaguely stating that one month prior to filing of the application, they learnt about the trial Court's decree. No particulars about the date of knowledge and the source of knowledge is pleaded. The application is vaguely filed on the ground that they were unaware about the decree. The appellants had appeared in the suit and also filed a written statement. However, the application is bereft of any application regarding applicant's attempts to find out the status of the suit.

7. In view of the vague reasons stated in the application, the first appellate court has rightly rejected the application for condonation of delay. The first appellate court has also referred to the other pending proceedings between the parties where the appellants had claimed a right of preemption. Thus, pendency of the other proceedings is also considered to be an important aspect to hold that though the appellants were aware about the trial Court's decree, no steps were taken to file any appeal. In view of the vague reasons stated in the application, the findings recorded by the first appellate court in rejecting the application cannot be faulted.

8. There is no illegality or perversity in the reasons recorded by the first appellate court. The second appeal does not raise any substantial question of law. Hence, the second appeal is dismissed.

9. In view of the dismissal of the second appeal, civil application is disposed of as infructuous.

(GAURI GODSE, J.)