

MJ Jadhav

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CIVIL APPELLATE JURISDICTION  
SECOND APPEAL NO. 371 OF 2017**

Raghunath Yesu Wagh (Since ... Appellants  
Deceased) LRs

vs.

Rajaram Raghunath Wagh and Ors. ... Respondents

Mr. Kuldeep Nikam for the Appellants.

Mr. Rajaram Bansode for Respondents.

**CORAM : GAURI GODSE, J.**

**DATED : 21<sup>st</sup> FEBRUARY 2025**

**ORDER:**

1. Heard learned counsel for the appellant. This appeal is preferred by one of the sons of the original plaintiff to challenge rejection of the application for condonation of delay. The application was filed for condonation of delay caused in filing the first appeal against the dismissal of the plaintiff's suit for injunction. The father of the parties had filed a suit for injunction, which was dismissed on 17<sup>th</sup> December 2011. The father filed first appeal alongwith the delay condonation application. During the pendency of the application, father expired and one of the son i.e. original defendant no.1 was transposed as applicant in place of the deceased father. The application is thereafter dismissed. The dismissal of application is

challenged in this second appeal.

2. Learned counsel for the appellant submits that the delay condonation application is rejected on hyper technical grounds, though, the medical papers of the plaintiff's illness were placed on record. He submits that the appellant, who was subsequently transposed in place of deceased plaintiff had supported the grounds for delay by examining himself. He submits that the rejection of the delay condonation application is without considering the supporting evidence on the illness of the plaintiff, who originally had filed application for condonation of delay. He, therefore, submits that the second appeal would require consideration on the ground that the reasons for delay and the supporting evidence is disbelieved on hyper technical grounds.

3. I have perused the papers of the second appeal. The suit filed for simplicitor injunction by the father was dismissed on 17<sup>th</sup> December 2011. Thereafter, the father filed a suit for partition and separate possession. After filing the suit for partition and separate possession, he filed the first appeal for delay condonation application against the dismissal of his suit for injunction.

4. The first appellate court had referred to the filing of subsequent suit for partition and separate possession. The appeal

Court, therefore, disbelieved the grounds of the plaintiff's illness as a genuine ground for condonation of delay. The reasons recorded by the first appellate court are based on appreciation of the evidence and the admitted fact of filing of a partition suit after the dismissal of the injunction suit. Thus, the appreciation of evidence by the first appellate court is based on the pleadings and evidence on record. The grounds raised on behalf of the appellants would amount to re-appreciating the evidence on record, which is not permissible under Section 100 of Civil Procedure Code.

5. I do not see any illegality or perversity in the reasons recorded by the first appellate court in disbelieving the grounds for condonation of delay.

6. The second appeal does not raise any substantial question of law. Hence, the second appeal is dismissed.

**(GAURI GODSE, J.)**