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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
INTERIM APPLICATION NO. 14279 OF 2024
IN
SECOND APPEAL (ST) NO. 25228 OF 2024**

Balaso Alias Balasaheb ... Appellant
Anandrao Patil
Vs.
Shriram Balkrushna Sabnis ... Respondents
since deceased through LRs
Sarita S.Sabnis and Others

Mr. Virendrasinh Tapkir for the Appellant.

CORAM : GAURI GODSE, J.

DATE : 6th JANUARY 2025

ORDER :

1. Due to connectivity problem the soft copy of the matter is not accessible. Learned counsel for the appellant has tendered hard copy of the second appeal and applications which are taken on record. This application is for condonation of delay of 189 days in filing the second appeal.

2. I called upon the learned counsel for the appellant to point out whether the second appeal raises any substantial question of law.

3. Learned counsel for the appellant submits that only based on assessment record and the copy of the revision extract at Exhibit 104 both the courts recorded findings that the plaintiff was never put in possession as an owner in respect of the middle room of property house no. 2607. He submits that the assessment record could not have been accepted by both the courts to disbelieve the plaintiff case that he was also tenant of the middle room of property no. 2607. He submits that in the absence of any valid evidence both the courts could not have disbelieved the plaintiffs' case that he is a tenant also in respect of middle room of property no. 2607.

4. Learned counsel for the appellant therefore submits that the second appeal would require consideration on the findings recorded by the trial court in the absence of any valid evidence to support the contention raised by the defendants.

5. I have perused the impugned judgments. The appellants suit is partly decreed in respect of three rooms i.e. two rooms of property no. 2608 and one room of property no. 2607. The defendants counter claim for possession of the middle room of property no. 2607 is decreed and the plaintiff is directed to handover possession of the said room. Tenancy rights claimed by the plaintiff is accepted only with regard to three rooms. The reasons recorded

by both courts indicate that the assessment record produced before the court indicated the names of tenants occupying the rooms in house no. 2607 and 2608. Both the courts have in detail examined the evidence on record including the assessment extract of both the suit properties and recorded findings of facts that plaintiff was unable to prove any right in respect of the middle room of property no. 2607. Nothing is produced on record by the plaintiff to show any tenancy right in respect of the said middle room. In the absence of any evidence to indicate plaintiff's right to retain possession of the said middle room, both the courts have rightly accepted the plaintiff's possession over the said room to be unlawful.

6. The defendants' title of ownership over the suit property is not in dispute. The plaintiff claimed right to occupy the suit property only based on tenancy rights. Both the courts after examining the evidence on record has disbelieved the plaintiff's case of being in lawful possession in respect of the middle room of House no. 2607. I do not find any illegality or perversity in the findings of the facts recorded by both the courts,

7. The second appeal does not raise any substantial question of law. For the reasons stated above, I do not find it necessary to issue notice on the application for condonation of delay.

8. I have perused the application. In the facts and circumstances of the case delay is condoned and the interim application for condonation of delay is allowed.

9. For the reasons recorded above the second appeal is dismissed. 9

10. In view of the dismissal of the second appeal pending Application No. 14280 of 2024 is disposed of as infructuous.

[GAURI GODSE, J.]