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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

**CIVIL APPELLATE JURISDICTION
SECOND APPEAL NO. 768 OF 2015**

**WITH
INTERIM APPLICATION NO. 14199 OF 2024
IN
SECOND APPEAL NO. 768 OF 2015**

Shri. Keru Umaji PacharneAppellants
and ors (Since Decd. Thr. LRs)

Vs.

Radhakrishna Umaji Pacharne and orsRespondents

Mr. Ketan Joshi for the appellants
Mr. Onkar Gawade i/b Jaydeep Deo for respondent no. 1
Mr. Shardul Diwan i/b Mr. Rahul Kadam for respondent no. 6a.

CORAM : GAURI GODSE, J.

DATE : 13th JANUARY 2025

ORDER:

INTERIM APPLICATION NO. 14199 OF 2024:

1. This application is for bringing on record names of heirs and legal representatives of the sole appellant. There is delay of two years and 136 days in filing the application. Learned counsel for the applicants submits that the delay is explained in detail in the application with reference to all the applicants. He submits that the delay is unintentional and the applicants be permitted to bring on record heirs of the sole appellant.

2. Application is vehemently opposed by the respondents. Learned counsel for the respondents submits that the delay is only with an intention to stall the execution of the partition decree. He submits that vague allegations are raised for condonation of delay.

3. I have perused the application as well as the affidavit in reply. Though the reasons stated in the application are opposed by filing an affidavit in reply, there is no serious opposition raised in the affidavit in reply on the specific grounds raised in the application.

4. In the facts and circumstances of the case, the delay is condoned and the application is allowed in terms of clause (a), (b) and (c). Amendment to the cause title of the second appeal to be carried out within four weeks.

SECOND APPEAL NO. 768 OF 2015:

5. Heard learned counsels for the parties in the second appeal. The second appeal arises out of rejection of the application for condonation of delay in filing the first appeal by original defendant no. 2. Present applicants are brought on record as heirs and legal representatives of defendant no. 2. There is delay of 361 days in filing the first appeal.

6. Learned counsel for the appellants submits that the reasons for the delay in filing the first appeal was two fold. Firstly, defendant no. 2 was seriously ill and was aged about 78 years. Hence, was unable to take steps within time. Secondly, the grounds raised for condonation of delay is regarding defendant no. 1 not having any knowledge about the trial Court's decree. Learned counsel for the appellants submits that since defendant no. 2 was unable to appear in the suit, he was unaware about trial Court's decree. Hence, there was delay in filing the first appeal. Learned counsel for the appellants further submits that supporting medical documents were produced on record to show that defendant no. 2 was unwell and thus, could not take steps to file the first appeal within time.

7. Learned counsels for the respective respondents support the impugned order. They submit that by the trial Court's decree, shares of all the parties have been identified and no prejudice is caused to the appellants in view of the trial Court's decree for partition and separate possession. They submit that vague reasons are raised in the application for condonation of delay in filing the first appeal. They submit that the reasons are correctly appreciated by the first Appellate Court as not sufficient to condone the delay. They, therefore, submit

that the second appeal does not raise any question of law.

8. I have perused the papers. The partition decree is dated 19th June 2009. Defendant no. 2 who filed the first appeal was served with the suit summons; however, he failed to appear and filed written statement to oppose the suit claim. Hence, the suit proceeded without any written statement of defendant no. 2.

9. A perusal of the reasons in the impugned order indicates that the first Appellate Court has examined the grounds for condonation of delay. The medical certificate is examined by the first appellate court. The first Appellate Court held that the document produced on record and the reasons in the application for condonation of delay raise a ground on illness which is not sufficient to hold that defendant no. 2 was prevented from filing the first appeal in time. A perusal of the reasons stated in the application refers to general illness and a statement that defendant no. 2 was advised bed rest. However, there is no supporting evidence to indicate that defendant no. 2 was seriously ill and was advised bed rest. The first Appellate Court has referred to the reasons in the medical certificate and recorded that the medical certificate referred to breathlessness and weakness from

March 2009 in the certificate issued on 14th July 2010. Hence, the first Appellate Court held that the reasons stated were vague and there was no sufficient reason for condonation of delay.

10. A perusal of the application for condonation of delay does not indicate any date of knowledge or source of knowledge about the trial Court's decree. The reasons stated in the application for condonation of delay for filing the first appeal are vague and are not supported by any justifiable documents. There is delay of almost a year in challenging the trial Court's decree. The reasons stated by defendant no. 2 are not sufficient to condone the delay of almost a year. I do not find any illegality or perversity in the reasons recorded in the impugned order.

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

12. In view of dismissal of the second appeal, pending applications, if any, stand disposed of as infructuous.

[GAURI GODSE, J.]