

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**  
**NAGPUR BENCH, NAGPUR**

**Civil Application (CAS) No.330 of 2014 in S.A. St.No.4431 of 2014**

*(Smt. Roomshah Khatoon wd/o. Wazir Khan .vs. Abdul Rafiq s/o. Abdul Nabi and anr.)*

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Office notes, Office Memoranda of  
Coram, appearances, Court's orders  
or directions and Registrar's orders.  
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Court's or Judge's Orders

Mr.Milind P.Jagdeo, Adv. for the applicant.  
Mr.Raju Dhoble, Adv. for respondent no.1.

**CORAM** : A.P.BHANGALE, J.

**DATE** : 27.7.2015.

Heard.

Civil Application No.330 of 2014 is preferred by the applicant for condonation of delay of 2008 days in filing the Second Appeal. According to the applicant, she wants to prefer Second Appeal against the Judgment and decree to which she was not party in the trial Court. It was a Special Civil Suit No.340 of 1998 between Abdul Rafiq s/o. Abdu nabi and Mohd. Shafi s/o. Abdul Rashid. That suit registered on 21.3.1998 was decided on 27.11.2000 by the learned 4th Joint Civil Judge (Sr.Dn.), Nagpur. The suit was for specific performance of the agreement to sell the suit property and it was decreed by the trial Court in the following terms :

“ Suit is decreed with costs.

The defendant or his agent, servant,  
relatives or friends etc. is hereby permanently

*restrained from transferring the suit property by any mode of transfer in favour of any third person except the plaintiff.*

*Decree for specific performance of contract for execution of the sale deed and possession in respect of suit property, more particularly described in para no.1 in the plaint and Schedule of the property attached with plaint in favour of plaintiff on payment of balance consideration amount Rs.25,000/- as per document Exh.34, Agreement of Sale dated 30th January, 1996.*

*The defendant shall execute registered sale deed of the suit property as per document Exh.34, agreement of sale of date 30.1.1996 in favour of plaintiff on payment of balance consideration amount Rs.25,000/- within three months from today and shall deliver the possession of the suit property to the plaintiff. If the defendant failed to execute the registered sale deed and deliver the possession of the suit property to plaintiff within above stipulated time then the plaintiff shall get it registered sale deed and possession of the suit property through Court at the costs of plaintiff as per the agreement document Exh.34.*

*The plaintiffs shall deposit in Court or pay to defendant the balance consideration amount Rs.25,000/- within two months from today.”*

*Appeal against this Judgment and decree*

bearing Regular Civil Appeal No.13 of 2001 was also dismissed with costs and the appellant i.e. original defendant was directed to comply with the impugned Judgment and decree passed by the trial Court within two months from the date of order i.e. w.e.f. 24.2.2011. The appeal was decided by the District Judge-11, Nagpur. Now it is alleged on behalf of the non-applicant, who strongly opposed the application for condonation of delay, to argue that the original defendant and present applicant are in collusion with each other in order to defeat the decree and to deprive the decree holder from enjoying fruits of decree which was concurrently passed in favour of the plaintiff in Special Civil Suit No.340 of 1998. The appeal was also dismissed and concurrent decrees were in favour of the original plaintiff.

This application is sought to be preferred on the ground that now third party wants to prefer the Second Appeal. According to the learned Counsel for the applicant, his name was incorporated as second respondent in Regular Civil Appeal No.13 of 2001 as, according to him, defendant had entered into agreement with the present applicant dt.17.9.1997. According to the learned Counsel for the non-applicant, the suit agreement was dt.30.1.1996 which was dated prior to the alleged agreement between her and original defendant in the suit and for that reason, the Appellate Court was pleased to allow presence of the present applicant at the time of final hearing of First Appeal i.e. R.C.A. No.13 of 2001. Original agreement of sale deed dt.30.1.1996 was subject matter of Special Civil Suit No.340 of 1998 decided by 4th Joint Civil Judge (Sr.Dn.),

Nagpur decided on 27.11.2000, against which Regular Civil Appeal No.13 of 2001 was preferred which was decided by Judgment and order dt.24.2.2011. Concurrent Judgments by the trial Court as well as the first Appellate Court were in favour of the plaintiff for decree of specific performance as stated above. This applicant whose presence was allowed by the first Appellate Court at the time of final hearing in the appeal cannot get locus according to law to challenge the Judgment and decree passed in favour of original plaintiff Abdul Rafique Abdul Nabi for want of privity of any contract with the said plaintiff. It is also revealed that the present applicant has already adopted remedy of suit bearing Special Civil Suit No.307 of 1998 which suit is pending for decision in the trial Court. Under these circumstances, the learned Counsel for the non-applicant rightly objected the application for condonation of huge delay of more than 1000 days in such a case on the ground that the applicant is moving this Court just to deny fruits of the decree of specific performance of contract passed by concurrent Judgments in favour of the plaintiff in this case by the trial Court as well as the first Appellate Court. The ground stated in the application for condonation of delay are also vehemently criticized as false and mala fide and it is contended that the delay is intentional and cannot be condoned.

Looking into facts and circumstances brought to my notice and since remedy of suit is adopted by the applicant herein and her suit is pending for decision on merits, therefore, as far as present application to prefer Second Appeal as intended is concerned, the application is

bound to be rejected on the ground that she was not a party to the original Special Suit for specific performance of contract dt.30.1.1996, in respect of which specific relief is already granted in the form of decree as stated above by the concurrent Judgments of the trial Court as well as the first Appellate Court and furthermore the applicant has adopted remedy of Special Civil Suit in respect of alleged agreement between her and original defendant i.e. Mohd. Rafique Abdul Nabi. I am not inclined to condone inordinate delay in the present application to prefer appeal. Hence, the application is rejected.

However, it is made clear that the observations made herein are for deciding the application only for condonation of delay shall not, however, be construed as against the applicant on merits of her suit i.e. Special Civil Suit No. 307 of 1998, which is still pending. The application is dismissed with costs.

**JUDGE**

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