

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

SECOND APPEAL NO.330 OF 2015

(Narayan s/o Ramaji Nimkar ..vs.. Murlidhar s/o Kushabrao Ninawe)

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

CORAM : Z.A. HAQ, J.

DATED : 04-12-2015

Heard Ms. M.P. Munshi, learned Advocate for the appellant and Shri A.R. Ingole, learned Advocate for the respondent.

2. The appellant/original defendant has filed this appeal challenging the judgment passed by the learned District Judge, rejecting the application filed by the appellant praying for condonation of delay of 851 days in filing the appeal, and consequently dismissing the appeal.

3. The learned District Judge has exhaustively dealt with all the relevant facts in paragraph No.9 onwards. The facts recorded by the learned District Judge show that the appellant had been attending the proceedings of the civil suit and was aware about stages of the civil suit. The learned District Judge has also recorded that even after receiving the notice of execution proceedings, the appellant was not vigilant in filing the appeal within limitation. It is also recorded that the appellant participated in the execution proceedings. In these facts,

the learned District Judge has rightly negated the contention of the appellant blaming the advocate for the delay. The judgment passed by the learned District Judge is proper and based on appreciation of all the relevant facts. The learned Advocate for the appellant has not been able to point out any perversity in the findings recorded by the learned District Judge.

4. I see no reason to interfere with the appeal. The appeal is dismissed. In the circumstances, the parties to bear their own costs.

The learned Advocate for the respondent has further pointed out that there is delay of about three days in filing the appeal before this Court and there is no application for condonation of delay. It is pointed out that the impugned judgment is passed on 20-11-2014, the application for obtaining the certified copy was made on 21-11-2014, the appellant was told to appear on 04-12-2014 for collecting the certified copy, the certified copy was ready on 04-12-2014, but it was collected on 08-12-2014. These facts were brought to my notice by the learned Advocate for the respondent. The period from 04-12-2014 to 08-12-2014 has to be taken into consideration for calculating the period of limitation and if it is taken into consideration, then the second appeal is filed beyond ninety days.

JUDGE