

FARAD CONTINUATION SHEET No.
IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR

CIVIL APPLICATION (CAS) NO. 762 OF 2014
IN
SECOND APPEAL ST. NO. 14988 OF 2014
Sheku Bhimji Yedme VERSUS Devidas Bhimji Yedme & Ors.

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

Court's or Judge's orders

Shri D. S. Raut counsel for the appellant.
Shri A. S. Dhore counsel for the respondents.

CORAM : A. S. CHANDURKAR J.
DATE : FEBRUARY 11, 2015.

Prayer is to condone delay of six hundred and sixteen days in filing second appeal.

The appellant who is the original plaintiff is seeking to challenge the judgment dated 30.07.2012 in the second appeal. In the application for condonation of delay dated 31.07.2014 it was stated that the applicant was under financial crisis and hence appeal could not be filed. Thereafter applicant has filed affidavit dated 11.08.2014 in which it is stated that his son and daughters were of marriageable age and hence to search life partners for them, the applicant was required to travel across the State. It is further stated that the applicant was doing labour work and due to work load he fell ill. He was bed ridden for 8 months.

In the reply filed by the respondents it is stated in para 6 that the three daughters of the applicant were

married in the years 1992, 1995 and 1998. It is further stated that the son was married in the year 2005. It is also stated that the reason regarding illness cannot be accepted as according to applicant he was traveling across the State for searching life partners for his children. Thereafter the applicant has filed rejoinder dated 19.01.2015 in which it is stated that the certificate dated 25.11.2014 issued by the Police Patil as regards marriage of applicant's children cannot be relied as the Police Patil does not have any such authority to issue such certificate.

The learned counsel for the applicant relying on aforesaid application and affidavit in support thereof submitted that there were bonafide reasons for not filing the appeal within limitation. He submits that certificate issued by the Police Patil cannot be relied upon and in that regard he placed reliance on provisions of Maharashtra Village Police Act, 1967 as well as provisions of Registration of Births and Deaths Act, 1969. He, therefore, submitted that the delay in filing second appeal deserves to be condoned.

On the other hand the learned counsel for the respondents submitted that the case of the applicant cannot be believed in view of contrary statements made in the application and the subsequent affidavit. He further submitted that contents of certificate issued by the Police Patil were not specifically controverted to. He, therefore, submitted that delay was not properly explained.

The delay in filing proceedings is required to be satisfactorily explained before the same can be condoned by the Court. The explanation as furnished should be

acceptable and should indicate that for reasons beyond the control of the applicant he was prevented from filing the proceedings within limitation . The stand of the applicant in the affidavit dated 11.08.2014 that he was searching for life partners for his children is belied by certificate dated 25.11.2014 in which it is stated that applicant's children were married long back. Though a Police Patil may not be empowered under the provisions of Maharashtra Village Police Act, 1967 to issue such certificate, the applicant has not specifically denied the fact that his children were so married. Hence, the ground that he was required to travel for search of life partners is falsified. Similarly, there is no document to indicate treatment being undertaken by the applicant. More over, applicant has stated that he was required to travel and hence both these stands cannot be taken together.

It is, therefore, clear that the reasons that are assigned are not sufficient to condone the delay. As said delay has not been properly and satisfactorily explained, the application seeking condonation of delay stands rejected with no order as to costs. Consequently, Second Appeal also stands disposed of.

JUDGE