

IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
APPELLATE SIDE
NAGPUR BENCH, NAGPUR

CIVIL APPLICATION (CAS) NO. 1170 OF 2013
IN
SECOND APPEAL ST. NO. 22598 OF 2013

Kamla Shankar Masram & Ano. Vs. Shewanta Mahadeo Meshram thr L.Rs. Ashok Mahadeo
 Meshram & Ors.

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

Court's or Judge's Order

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 Shri N. B. Bargat Adv for applicants.
 Shri S. C. Bhalerao Adv for non applicants.

CORAM: A. S. CHANDURKAR J.

DATED: FEBRUARY 17, 2015.

Present application is moved for condoning the delay of 1452 days in filing second appeal has been moved by the original defendant Nos. 2 and 3. Reasons for the delay are mentioned in paragraphs 5 to 9 of the application.

Shri S. C. Bhalerao, learned counsel appearing for respondent nos. 1(b) to 1(e) has however raised a preliminary objection to the tenability of the Second Appeal on the ground that after the suit was decreed by the trial Court the present defendant nos. 2 and 3 did not challenge aforesaid decree. Said judgment and decree was challenged only by original defendant nos. 1(a) to 1(e) and no. 4. He therefore submitted that as the decree passed by the trial Court became final against defendant nos. 2 and 3, second appeal at their instance was not tenable. He, therefore, submits that for said reason there would be no occasion to consider the prayer for condoning delay.

Shri N. B. Bargat, learned counsel for the applicants submits that on account of illiteracy and ignorance, the original defendant nos. 2 and 3 could not challenge the decree passed by the trial Court. He, therefore, submits that the Second Appeal deserves to be considered on merits after condoning the delay.

It is an admitted fact that the decree passed by the trial Court was not challenged by original defendant nos. 2 and 3. The appellate Court has dismissed the appeal filed by defendant nos. 1(a) to 1(e) and no. 4 thereby confirming the decree passed by the trial Court. Hence the decree that became final against defendant nos. 2 and 3 cannot now be challenged by them by filing second appeal. The decision reported in the case of *Hindustan Petroleum Corporation Ltd. Vs. Diliup Prabhakar Dingorkar and another* 2006(3) *Maharashtra Law Journal* 488 relied upon by the learned counsel for the respondents supports the aforesaid position.

In view of aforesaid, as the second appeal itself is not maintainable at the instance of defendant nos. 2 and 3 it is not necessary to consider the prayer for condoning delay. Hence, for reasons aforesaid civil application stands dismissed. Consequently, Second Appeal St. No. 22598 of 2013 also does not survive. This adjudication however does not preclude the applicants from taking appropriate steps in accordance with law if they so desire to challenge the decree passed by the trial Court.

JUDGE