

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

Second Appeal No.154 of 2016
(Suresh Kondbaji Burewar v. Sanjay s/o Arunkumar Mishra)

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

Shri S.N. Mahajan, Advocate for Appellant.
Shri C.V. Jagdale, Advocate for Respondent.

Coram : R.K. Deshpande, J.
Date : 13th July, 2016

The Trial Court passed a decree for recovery of an amount of Rs.5,00,000/- with interest at the rate of 12% per annum from the date of filing of the suit till its realization along with the costs of Rs.5,000/- towards notice charges. The lower Appellate Court has rejected Misc. Civil Application No.995 of 2015 for condonation of 455 days caused in filing Regular Civil Appeal. Hence, the present second appeal by the original defendant.

The appellant-defendant took the stand in the application for condonation of delay that his brother was ill and, therefore, he was required to look after his brother. The brother of the appellant-defendant died on 28-7-2013. The judgment by the Trial Court was delivered on 3-5-2014 and the medical prescription about the illness of the brother of the

appellant-defendant issued on 12-2-2015 was produced. The lower Appellate Court has held that the prescription does not give the dates on which the brother of the appellant-defendant was ill, is found to be false. It is not the case that for the first time upon receipt of notice of execution proceedings, the appellant-defendant came to know of the decree passed by the Trial Court. In such a situation, the discretion exercised by the lower Appellate Court in rejecting the application for condonation of delay cannot be held to be improper.

The second appeal is dismissed.

Judge.

Lanjewar