

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

Civil Application (CAS) No.224 of 2016

In

Second Appeal Stamp No.2701 of 2016

(Umesh s/o Narayanrao Masal v. Dilip s/o Mahipatrao Masal and others)

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

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Shri A.V. Bhide, Advocate for Applicant/Appellant.

**Coram : R.K. Deshpande, J.**

**Date : 18<sup>th</sup> July, 2016**

Civil Application (CAS) No.224 of 2016 :

At the request of Shri Bhide, the learned counsel for the applicant/appellant, the oral prayer for getting the dates '6-11-2013', '7-11-2013' and '8-11-2013' mentioned in para 3 of this application, corrected by '6-03-2013', '7-03-2013' and '8-03-2013', respectively, is allowed. Necessary correction be carried out forthwith.

There is a delay of 968 days caused in filing the second appeal challenging the decision of the lower Appellate Court rendered on 11-3-2013 in Regular Civil Appeal No.40 of 2011.

Notice was issued by this Court on 16-3-2016. All the

parties are served. None appears for the respondents. No reply is filed opposing the contents of the application.

The sole respondent-Narayan Mahipatrao Masal, the original plaintiff, died on 2-3-2013 pending Regular Civil Appeal No.40 of 2011 and the judgment was delivered on 11-3-2013. The appellant, who is the legal heir of the original plaintiff, was not aware of the decision delivered by the lower Appellate Court, and he got the knowledge of it upon receipt of the mutation proceedings in the month of January, 2016. The facts stated in the application are not controverted. I am satisfied that the uncontroverted averments made in the application make out a sufficient cause. Hence, the delay caused is condoned.

The civil application is disposed of.

Second Appeal Stamp No.2701 of 2016 :

Heard Shri Bhide, the learned counsel for the appellant.

The substantial question of law, which arises in the present appeal, is as under :

In the absence of Regular Civil Appeal No.40 of 2011 being closed for judgment, whether the lower Appellate

Court could have proceeded to decide the appeal on merits on 11-3-2013, particularly when a pursis was placed on record on 6-3-2013 intimating that the respondent in the appeal (original plaintiff) has expired?

Issue notice for final disposal of the matter, since the consideration is for remand of the matter, returnable on 19-9-2016.

Service by RPAD in addition to regular mode, is allowed.

Judge.

Lanjewar

“I certify that this Order uploaded is a true and correct copy of original signed Order.”

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P.D. Lanjewar,  
PS to Hon'ble Judge