

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

CIVIL APPLICATION (CAA) NO.38 OF 2016

IN

APPEAL AGAINST ORDER (STAMP) NO.12416 OF 2016

(Pawan s/o Pralhad Parkhade and others ..vs.. Mahadeo Bhimrao Chatarkar)

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

Court's or Judge's orders

Shri U.J. Deshpande, Advocate for the applicants/appellants,
Shri S.A. Dutonde, Advocate for the respondent.

CORAM : Z.A. HAQ, J.

DATED : 26-10-2016

Heard.

The non-applicant had filed Regular Civil Suit No.139/2005 praying for decree for specific performance of contract. The civil suit was decreed by the judgment dated 01-04-2006. The judgment and decree was challenged by the judgment-debtor (predecessor of the present applicants) in appeal under Section 96 of the Code of Civil Procedure and as there was delay in filing the appeal, an application praying for condonation of delay was filed. During the pendency of the proceedings, the judgment-debtor died on 04-03-2010. The proceedings were disposed on 16-12-2010 as abated. The applicants filed application under Order IX Rule 9 of the Code of Civil Procedure on 18-01-2011. These proceedings were registered as M.J.C. No.13/2011. These proceedings were dismissed for

want of prosecution on 20-08-2014. The applicants filed fresh appeal challenging the judgment and decree passed in Regular Civil Suit No.139/2005 and as there was delay, an application praying for condonation of delay was filed. These proceedings were registered as M.J.C. No.160/2014. The learned District Judge rejected M.J.C. No.160/2014 by the order dated 19-04-2016 recording that the applicants failed to show any cause for condonation of delay.

Now the applicants have filed appeal against order challenging the order passed by the District Court on M.J.C. No.13/2011 on 20-08-2014 and as there is delay in filing the appeal against order, this application is filed. The explanation for delay of 579 days in filing the appeal against order is that the applicants are not given proper legal advice by their Advocate. The learned Advocate for the applicants, relying on the judgment given in the case of *Ram Sumiran and others vs. D.D.C. and others* reported in (1985) 1 SCC 431, has submitted that as the applicants are illiterate persons and are not aware about niceties of law, considering the facts of the case, the delay may be condoned. Except for putting blame on the Advocate, the applicants have not pointed out why they were not vigilant in attending the proceeding of M.J.C. No.13/11 which were dismissed for want of prosecution on 20-08-2014. The explanation given by the applicants is not sufficient to condone the

inordinate delay. In the facts of the present case, the judgment relied upon by the Advocate for the applicants is not of any assistance to the applicants.

It is submitted that the decree passed in Regular Civil Suit No.139/2005 is executed and sale-deed in respect of the suit property is executed through the Court on 24-12-2014.

In view of the above, the civil application is dismissed with costs quantified at Rs.10,000/- (Rupees Ten Thousand) to be paid by the applicants to the non-applicant within two months.

Consequently the appeal against order is also rejected.

JUDGE

adgokar