

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

CIVIL APPLICATION NO.242/2016 IN SECOND APPEAL ST.NO. 422/2016
Bijaram Namdeorao Dukare ..vs.. Sau. Sundara Bapurao Waghmare & anr.

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

Court's or Judge's orders.

Mr. S. K. Bhoyar, Advocate for applicant.

Mr. A. S. Moon, Advocate for non applicants.

CORAM : V.M. DESHPANDE, J.

DATED : NOVEMBER 6, 2017

1. This is an application for condonation of delay in preferring the present second appeal. Heard Mr. S. K. Bhoyar, learned counsel for the applicant and Mr. A. S. Moon, learned counsel for the non applicants.

2. The non applicants who are the sisters of the present applicant have filed a suit for partition before the learned trial Court and that was registered as Regular Civil Suit No.86/2009. The said was decreed by the learned Judge of the trial Court on 05.01.2011.

3. Feeling aggrieved thereby, a regular civil appeal under Section 96 of the Code of Civil Procedure was filed before the learned lower appellate Court. The said appeal was barred by limitation by about 350 days. Therefore, MARJE No.190/11 was filed for condonation of delay. The learned lower appellate Court on 16.02.2012 dismissed the application and refused to condone the delay. Consequently, the registration of

the first appeal challenging the judgment and decree passed by the trial Court in Regular Civil Suit No.86/2009 was refused.

4. Being aggrieved thereby, the applicant preferred the present second appeal. Though the order passed by the learned appellate Court is dated 16.02.2012, the present second appeal is filed on 07.01.2016 thus there was a delay of about 1029 days therefore the present application for condonation of delay is filed. This Court had on 15.03.2016 issued notices on the application for condonation of delay.

5. On 18.07.2017, two weeks time was granted. The present applicant had filed additional affidavit in support of the application for condonation of delay.

6. Heard Mr. Bhoyar, learned counsel for the applicant. According to the learned counsel for the applicant and as per the application for condonation of delay, the applicant is aged about 82 years was bed ridden and therefore the delay is caused. As per the order dated 18.07.2017, additional affidavit in support of the prayer made in the application is filed on record by the applicant on 06.09.2017 along with document pertaining to the medical report and his condition. Perusal of the said shows that those are prior to 16.02.2012. Even the learned counsel for the applicant fairly submits that the applicant could not file any document showing his ill health on record after the

order dated 16.02.2012. He submits that the applicant is bed ridden and therefore the appeal could not be filed within time.

7. I am afraid this submission could be accepted in view of the fact that the additional submissions filed on record in view order dated 18.07.2017 is dated 06.09.2017, which is on affidavit. Bajiram has sworn in the said affidavit by coming to Nagpur in the office of the Notary which shows that the applicant was not bed ridden.

8. No sufficient reason is coming on record for condonation of delay. Consequently, the application is rejected. The delay caused for preferring the second appeal cannot be condoned. Consequently registration of the second appeal is also refused. No order as to costs.

JUDGE