

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

Civil Application (CAS) No.315 of 2015

In

Second Appeal Stamp No.935 of 2015

(Vilas s/o Vishnudas Rathod v. Shankarrao s/o Devrao Deshmukh and
others)

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

Shri S.A. Marathe, Advocate for Applicant/Appellant.

Shri Anand Deshpande, Advocate for Respondent Nos.1, 3 and 4.

Shri R.J. Shinde, Advocate for Respondent No.5-b.

Coram : R.K. Deshpande, J.

Date : 9th February, 2017

This application is for condonation of 201 days' delay caused in filing the second appeal.

The Trial Court passed a decree for possession of the suit property in favour of the respondents/plaintiffs and against the appellants/defendants. The lower Appellate Court has dismissed the appeal, and hence the original defendant No.4 is before this Court in this second appeal.

It is not disputed that by virtue of decree for partition dated 23-4-1928 passed in Civil Suit No.6 of 1928, the suit property was allotted to the share of the plaintiffs. The plaintiffs

were dispossessed, and hence the suit for recovery of possession was filed. It was the defence raised by the defendant that there was a reunion of the properties in the year 1968 and thereafter repartition was effected , in which the suit property was allotted to the share of the defendant. The Courts below have held that there is absolutely no evidence on record to establish reunion as well as repartition. The defendant raised a plea of adverse possession and also of lease of property in his favour. Both these issues are answered against him by the Courts below. The second appeal is filed after the delay of 201 days.

In the application for condonation of delay, the averment is that the applicant/appellant was ill and, therefore, could not file an appeal. It is also the averment that the applicant could not contact his counsel on medical grounds for preferring an appeal. The certificate of the doctor is produced on record showing that the applicant was under his treatment from 1-8-2014 to 20-11-2014. The certificate shows that the applicant was suffering from "IHD". The judgment in question was delivered on 29-3-2014, and the period of limitation expired on 29-6-2014. The certified copy was obtained in the month of August 2014, and the application seems to have been filed on 14-1-2015. The explanation so furnished does not satisfy the conscience of this Court so as to constitute it as sufficient cause.

The application for condonation of delay is dismissed.

Judge.

Lanjewar