

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

CIVIL APPLICATION (CAS) NO.244 OF 2016  
IN  
SECOND APPEAL ST. NO.3444 OF 2016

Gurudas Bondkuji Kamble (Dead) Thr. LRs. Tulsa w/o Gurudas Kamble and ors.

-vs-

Ghularam Ganpat Borkar and ors.

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Office notes, Office Memoranda of  
Coram, appearances, Court's orders  
or directions and Registrar's orders.

Court's or Judge's Orders.

Shri Y. S. Gorle, Advocate for applicants.  
Shri Nitin R. Bhisikar, Advocate for respondents.

CORAM : A.S.CHANDURKAR, J.

DATE : AUGUST 16, 2017

By this application it is prayed that delay of 754 days in filing the second appeal be condoned.

The first Appellate Court on 11/10/2013 dismissed the appeal filed by the original defendant Gurudas Kamble and confirmed the decree passed by the trial Court. In the application it is stated that said Gurudas Kamble expired on 28/08/2015 and after his death, while perusing all available documents, it came to the knowledge of his legal heirs that during his life time Gurudas had approached his counsel at Nagpur for filing the appeal. After gathering further information it was

learnt that no such appeal has been filed. After obtaining certified copy, the appeal came to be filed on 12/02/2016. An additional affidavit has also been filed in support of the prayer for condonation of delay. In this affidavit it is stated that during his life time, Gurudas had told the applicants that he had approached a counsel at Nagpur for filing the appeal. On gathering information, it was learnt that no appeal has been filed. It is therefore prayed that the delay in filing the appeal be condoned.

The application is opposed by the original plaintiff by submitting that after the trial Court decreed the suit, the plaintiff had filed execution proceedings being Regular Dakhast No.19/2005. The judgment debtor-Gurudas was served with the notice of these proceedings on 22/01/2014. However no steps were taken from 21/01/2014 till the death of Gurudas and thereafter till January 2016 when the certified copy came to be applied by his legal heirs. It is further stated that the reasons assigned are not sufficient.

Heard the learned counsel for the parties who have argued on the basis of the application, additional

affidavit and the reply filed on record.

The judgment of the first Appellate Court is dated 11/10/2013. Gurudas was served with notice in the execution proceedings on 21/01/2014. According to the applicants said Gurudas during his life time had approached a counsel for preferring the second appeal. However except stating that a counsel had been approached in that regard, no further details have been mentioned even in the additional affidavit. The name of the counsel who was approached is conspicuously missing. If according to applicants Gurudas during his life time had approached a counsel which fact was told to the applicants by Gurudas and the applicants after making inquiry found that no appeal was filed, the name of said counsel could have been mentioned in the application.

Even otherwise it can be seen that after being served in the execution proceedings on 21/01/2014, Gurudas during his life time does not appear to have taken any steps to challenge the decree as passed. It is to be noted that the decree was put under execution and the judgment-debtor would have normally taken steps to

prevent its execution. Thus from the application and the additional affidavit, I do not find that any sufficient cause has been made out for condoning delay. The application is therefore rejected. Consequently second appeal also stands dismissed.

**JUDGE**