

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

CIVIL APPLICATION (CAS) NO.1214/2017
IN
SECOND APPEAL ST.NO.5068/2017

Vitthal s/o Kachru Kodape
..VS..
Balkrishna s/o Jairam Deotale and ors

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

Court's or Judge's Order

Shri Mahesh Rai, Counsel for the applicant.

CORAM : V.M. DESHPANDE, J.
DATED : NOVEMBER 21, 2017.

1. This is an application for condonation of delay in filing the second appeal.
2. Heard learned counsel Shri Mahesh Rai for the applicant.
3. The decree is passed against the present applicant by learned 2nd Additional District Judge at Wardha in Regular Civil Appeal No.92 of 1999 on 29.8.2003 by which learned Lower Appellate Court directed the present applicant to remove encroachment by removing the construction carried out by him on the land owned by plaintiff Balkrishna.
4. Though the judgment and decree is passed on 29.8.2003, the second appeal is filed before this Court on 2.3.2016.

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Thus, there is a delay of 4476 days in preferring the the second appeal. Therefore, the present application for condonation of delay is filed.

5. After having gone through the contents of the application for condonation of delay and hearing learned counsel Shri Mahesh Rai for the applicant, it is clear that the present applicant wants to shift the blame on his earlier Advocate.

6. According to learned counsel for the applicant, the certified copy was applied on 1.12.2015. It was received on 4.12.2015. Still, the appeal is filed along with the application on 29.2.2016.

7. As per the applicant, he was not keeping good health during this period. However, there are no medical certificates on record to show that the applicant was suffering from any serious ailment which prevented him from moving out of his house. The application is vague. The delay is huge. Further during the course of submission, learned counsel Shri Mahesh Rai for the applicant submitted that the plaintiff has already executed the decree in Regular Darkhast No.72 of 2014 and the possession is already taken by the plaintiff.

8. The applicant has utterly failed to demonstrate any cogent and plausible explanation for approaching this Court so belatedly. In my view, the applicant has failed to prove

the case in his favour for condoning the delay.

9. In that view of the matter, the civil application for condonation of delay is rejected and the registration of the second appeal is refused.

JUDGE

!! BRW !!