

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

CIVIL APPLICATION (S) NO.273 OF 2017
IN
SECOND APPEAL ST. NO.5778 OF 2017

BABULAL S/O MANSU KASDEKAR AND OTHERS
VS
SAVITRIBAI WD/O RAMSING KASDEKAR & ANOTHER

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

Court's or Judge's orders

Mrs. S. W. Deshpande, Advocate for the appellants.
Shri N. L. Dhande, Advocate for the respondent no.1.

CORAM : A.S. CHANDURKAR, J.
DATED : AUGUST 01, 2017.

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

The applicants are original defendants in the suit for partition and separate possession filed by the non-applicants. The trial Court decreed the suit on 23-1-2012.

There was delay in filing the appeal before the first appellate Court and by order dated 26-11-2014, said delay was not condoned. This order was then challenged by filing Writ Petition No.4891/2015 on 31-7-2015. On 2-12-2015, the writ petition was permitted to be withdrawn with a liberty to file the second appeal. Accordingly, the appeal has been filed on 17-3-2017.

In the application, the aforesaid facts are stated. The affidavit of the applicant's Counsel has been filed in which it is stated that in the last week of December the papers were handed

over to the Counsel in her absence and thereafter the file was not traceable. After locating the same, the appeal was filed.

The application is opposed by the non-applicants by filing reply. It is denied that the applicants were diligent in prosecuting the proceedings. The reasons furnished are not satisfactory and, therefore, the delay does not deserve to be condoned.

Perusal of the record indicates that initially the impugned order was sought to be challenged by filing a writ petition. The writ petition was pending from July, 2015 till 2-12-2015. According to the affidavit of the learned Counsel, the papers were misplaced at her instance. Considering the fact that the suit is filed for partition and separate possession and I do not find that the delay has been deliberately caused, the same is condoned subject to costs of Rs.2000/- to be paid by the applicants to the non-applicants within a period of three weeks from today.

Application is disposed of in aforesaid terms.

JUDGE

/MULEY/