

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

Civil Application No.515 of 2015

In

Second Appeal Stamp No.8417 of 2015

(Smt. Bhagirathibai w/o Chirkut Balki v. Smt. Kolila w/o Pilaji Datarkar)

Office Notes, Memoranda of Coram, appearances, Court's orders or directions and Registrar's order	Court's or Judge's orders
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Shri M.D. Chikhate, Advocate for Respondent.

Coram : R.K. Deshpande, J.

Date : 9th February, 2017

The Trial Court passed a decree for partition and separate possession. The lower Appellate Court has dismissed the appeal. Hence, the original defendant is before this Court in this second appeal. The plaintiff and the defendant both are the real sisters.

There is a delay of 877 days caused in filing an appeal. The matter was on board published on 6th February, 2017. It was called out yesterday as well as today. None appears for the applicant. The explanation furnished is contained in paras 8 and 9 of the application, which are reproduced below :

“8. *The applicant submits that after judgment and decree passed by the first appellate court, the appellant had struck with the spondylosis arrest and therefore she was not able to*

move. It is submitted that the arrest was such severe that she was not able to perform her day-to-day tasks. As such the applicant is an old lady and is also suffering from other chronic ailments like asthma etc. Therefore it was just not possible on the part of the applicant to travel to Nagpur to engage counsel, file appeal and swear the affidavit and sign the necessary documents to be filed before this Hon'ble Court. Further the doctors have advised her to take complete bed rest for such period.”

“9. Further the applicant was under the bonafide impression that filing of second appeal before this Hon'ble Court is a costly affair and therefore unless the requisite amount has been accumulated it would not be possible on their part to file an appeal. Muchless the economic condition of the applicant is not good and her family earning is just hand to mouth, moreover considerable amount has been spent on the ailment of the applicant as a result considerable time has been elapsed in arranging the finance.”

The averments are totally vague and do not satisfy the Court on the question of sufficient cause.

Hence, the civil application for condonation of delay is dismissed.

Judge.

Lanjewar