

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

Civil Application (CAO) No.1205 of 2016

In

Misc. Civil Application Stamp No.9597 of 2016

In

Second Appeal Stamp No.78 of 2012

(Ashok Ganpatrao Goje v. Vitthal Narayanrao Ital (Dead), through LRs.
Krushnabai Vittal Ital and others)

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

Shri Mahesh Rai, Advocate for Applicant/Appellant.

Shri P.R. Agrawal, Advocate for Respondent Nos.1 to 4.

Coram : R.K. Deshpande, J.

Date : 17th February, 2017

This second appeal was dismissed in default by this Court on 23-4-2014. The order is reproduced below :

“ Mr. Manoj Kariya, counsel for the appellant, is absent.

Smt. K.R. Prajapati, holding for Mr. Manoj Kariya, counsel for the appellant, says that she is unable to argue the case and only Mr. Manoj Kariya will argue the case.

In view of above situation, second appeal is dismissed in default.”

One Smt. K.R. Prajapati, Advocate, holding for Shri Manoj

Kariya, Advocate, appeared for the appellant. It is, therefore, not possible to digest that the appellant was not aware of the dismissal of the second appeal in default by this Court on 23-4-2014. There is a delay of 706 days caused in filing the application for restoration of the second appeal.

Leaving apart the question of condonation of 706 days' delay in filing the application for restoration of the second appeal, the learned counsel for the appellant was asked to argue the matter on merits of the second appeal to satisfy the Court whether there exists the substantial question of law for consideration of this Court. It is urged that the decree for recovery of an amount of Rs.42,520/- passed by the Trial Court was reversed by the lower Appellate Court and the suit was dismissed. Hence, the original plaintiff is before this Court in this second appeal. The recovery was on account of the fact that the plaintiff, though entitled to allotment of 'B' type quarter, was not allotted, as a result he was required to pay the higher rent to get the accommodation in the open market.

With the assistance of the learned counsels appearing for the parties, I have gone through the decision of the Trial Court as well as that of the lower Appellate Court. The entitlement of the plaintiff for 'B' type quarter is not disputed. The defence put forth and accepted by the lower Appellate Court is that 'B' type quarter

was not available and, therefore, the plaintiff was offered 'C' type quarter, which he refused. The learned counsel for the appellant/plaintiff could not point out any evidence on record about existence of 'B' type quarter. The reference is made by the learned counsel to the register produced before the lower Appellate Court, which has been taken into consideration in support of the submission of availability of 'B' type quarter. The lower Appellate Court has held that the register is not proved. Be that as it may, it is not understood as to how the register came in possession of the plaintiff, who produced it before the Court. The production of register from the proper custody is not proved. The lower Appellate Court has held that in the absence of allotment of quarter, the employee would be entitled to house rent allowance and it is not a facility provided as a matter of right.

No substantial question of law arises for consideration of this Court. The second appeal is dismissed.

Judge.

Lanjewar