

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

Civil Application (CAO) No.1462 of 2015

In

Misc. Civil Application (Review) Stamp No.11898 of 2015

In

Second Appeal No.460 of 2014 (D)

(Amol s/o Prabhakar Rao Loybare v. Suryabhan s/o Konduji Chopkar
(Dead), through LRs. Smt. Subhadrabai Chopkar and others)

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

Shri P.R. Agrawal, Advocate for Applicant/Appellant.

Coram : R.K. Deshpande, J.

Date : 15th February, 2017

Civil Application (CAO) No.1462 of 2015 :

This is an application for condonation of 58 days' delay in filing the application for review. Notice was issued to the respondents. All the respondents are served. Neither any reply is filed nor any one appears for the respondents. After going through the averments made in the application, which remain uncontroverted, I am satisfied that a sufficient cause is made out for condonation of delay.

Hence, the civil application is allowed. The delay caused is condoned.

The civil application is disposed of.

Misc. Civil Application (Review) Stamp No.11898 of 2015 :

Heard Shri Agrawal, the learned counsel for the applicant.

This application seeks review of the judgment and order dated 24-3-2015 passed by this Court dismissing the second appeal in motion hearing.

The Trial Court passed a decree for possession based on title. The lower Appellate Court allowed the appeal and set aside the decree passed by the Trial Court.

On 22-12-2014, this Court passed an order as under :

“ One of the questions that arises is in absence of any evidence on the part of the defendant that they had refunded the loan amount with interest coupled with the fact that they had not initiated any proceedings for cancellation of sale deed dated 20-6-2003, whether the first appellate Court was justified in reversing the decree passed by the trial Court.

Issue notice to the respondent returnable on 3-3-2015.

Hamdast granted for service.

CIVIL APPLICATION (S) NO.1241 OF 2014.

Issue notice to the respondent returnable on 3-3-2015. Until further orders, there shall be ad interim relief in terms of prayer clause (a) of the application.”

Thereafter the matter came up for hearing on 24-3-2015, and this Court accepts the stand taken by the respondents/defendants that this was a money lending transaction and the sale-deed was by way of security. It further holds that the defendants also repaid the loan amount with interest, and this was believed by the lower Appellate Court.

Shri Agrawal, the learned counsel for the applicant/appellant, invited my attention to para 28 of the judgment of the lower Appellate Court, in which a categorical finding is recorded that “the defendants have also not led any evidence to show that they have refunded the loan of Rs.25,000/- along with interest. They should have applied for cancellation of

the sale deed by offering the refund of loan along with interest, at reasonable rate.” Prima facie, there is an error apparent on the face of the record when this Court recorded the finding that the amount of loan was repaid with interest.

Issue notice to the respondents, returnable on 7-6-2017.

Service by RPAD in addition to regular mode, is allowed.

Judge.

Lanjewar.