

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

Second Appeal No.397 of 2015
(Sk. Chhotu Sk. Rauf v. Shriram Narhi Tayde and another)

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

Shri V.R. Borkar, Advocate, holding for Shri I.S. Charlewar,
Advocate for Appellant.
Shri A.B. Mirza, Advocate for Respondents.

Coram : R.K. Deshpande, J.
Date : 12th January, 2017

The Trial Court passed a decree for removal of encroachment and possession. The appellant/original defendant preferred an appeal after an inordinate delay of 5 years, 5 months and 11 days. The reason put forth before the lower Appellate Court was that the papers were handed over the counsel along with the fees, but the counsel had neglected to file the appeal. The negligence of the counsel should not be fatal to the valuable right of the appellant to prefer an appeal against the decree.

The decree in question was passed on 9-2-2009. It was sought to be executed, and the notice for execution was served upon the appellant/defendant on 10-8-2011. Even if it is accepted that the appellant had no knowledge about non-filing of the appeal by the counsel, still it was open for the

appellant to have approached the counsel upon receipt of notice in execution proceedings and to make an enquiry. The appeal was filed on 22-7-2014 without there being any explanation atleast for the period from 10-8-2011 to 22-7-2014.

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

Judge.

Lanjewar