

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.
CIVIL APPLICATION NO.783/2017
IN
SECOND APPEAL (St.) NO. 15316/2017

Charandas Shankarrao Shelke

v.

Bhimrao Chindhuji Khadse

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

Court's or Judge's orders.

Shri H.N.Potbhare, the learned counsel for the appellant
Smt. Maldhure, the learned counsel for respondent

CORAM : V.M. DESHPANDE, J.

DATED : NOVEMBER 10, 2017

1] Heard Shri H.N.Potbhare, the learned counsel for the appellant and Smt. Maldhure the learned counsel for the respondent.

2] This is an application for condonation of delay for filing the second appeal. The delay for filing the second appeal is 857 days. According to the application, the applicant is the original defendant. A suit for permanent injunction was filed against him by non-applicant/plaintiff that his possession should not be disturbed by the present applicant. The said suit was decreed by learned Civil Judge Junior Division Pulgaon on 19/12/2013 and thereby the present applicant was injected from interfering with the

peaceful cultivating possession of present non-applicant over field survey No. 121 of mouza Inzala, Tah. Deoli, District-Wardha. The learned counsel for the applicant submits that though it was incumbent on the part of the applicant/original defendant to prefer the appeal within stipulated period, there occurred delay of 60 days in filing the Regular Civil Appeal under Section 96 of Code of Civil Procedure. Therefore, at the time of filing of the appeal, an application under Section 5 of the Limitation Act was also moved. The said application was separately registered as MJC No.80/2014. The said application was rejected by the learned Lower Appellate Court vide order dated 9/12/2014, consequently the registration of First Appeal was refused.

3] According to the learned counsel for the applicant Shri Potbhare as per the application though the said order ought to have been challenged by filing the second appeal before this Court, instead of preferring second appeal, a Writ Petition bearing Writ Petition No. 5369/2015 was filed. It is the further submission of the learned counsel for the applicant that, on 1/12/2015 allowed the applicant/writ petitioner to withdraw the writ petition since the remedy to challenge the order by filing second appeal is available to the applicant/writ petitioner. Therefore, applicant has withdrawn the said writ petition with a liberty to prefer second appeal.

4] It is the further submission of the learned counsel for the applicant that thereafter the applicant applied for certified copies of the judgment and decree so also the certified copy of the order in MJC. It is the further submission of the learned counsel for the applicant that meanwhile the applicant was suffering from heard disease and to that effect the medical certificate is also placed on record. He, therefore, submitted that the delay caused in preferring the second appeal is bonafide one and therefore, prays for allowing of the present application.

5] The application is seriously opposed by the non-applicant by filing the detail reply on affidavit. Smt. Maldhure the learned counsel for the non-applicant submits that at the time of filing of the writ petition No. 5369/2015 certified copy of the orders were placed on record. This submission is not countered by learned counsel for the applicant Shri Potbhare. She also invited my attention to the medical certificate which the said medical certificate pertains to the period 1/6/2016 to 15/6/2017. The order which permitted the present applicant to withdraw the writ petition is dated 1/12/2015. Thus, there is no explanation whatsoever from 1/12/2015 to 1/6/2016 as to what was the reason for that the applicant could not approach this Court by filing second appeal. Further, the submission of learned counsel for the applicant Shri Potbhare in respect of not deducting the time required for obtaining certified copy is also misconceived in as much as the certified copy is already

filed on record in writ petition and applicant was required to make a simple application to the Registry of this Court for return of those certified copies and could have filed the second appeal well within time. If that would have done the applicant was entitled to take a shelter of Section 14 of Limitation Act. Nothing that has been done by the present applicant. Further, as observed above, there is no explanation from 1/12/2015 to 1/6/2016.

6] Thus, in my view, the applicant has not shown sufficient cause for indulgence of this Court for condoning the delay. Consequently, the application is rejected. The registration of the second appeal is refused.

JUDGE

RSG