

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

Civil Application (CAS) No.922 of 2015

In

Second Appeal Stamp No.16474 of 2015
(Kasturchand Kanhaiyyalal Sharma v. S.K. Paunikar)

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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Smt. S.K. Paunikar, Advocate for Applicant/Appellant.
Shri A.A. Gharote, Advocate for Respondent.

Coram : R.K. Deshpande, J.

Date : 17th February, 2017

This is an application for condonation of 517 days' delay caused in filing the second appeal. The reply is filed opposing the application for condonation of delay.

Shri Paunikar, the learned counsel for the appellant, was asked to satisfy this Court on the merits of the matter. Hence, she is heard on merits.

The Trial Court passed a decree in favour of the plaintiff and against the defendant for an amount of Rs.50,000/- with interest at the rate of 6% per annum from the date of the judgment, i.e. 26-9-2006, till its realization. The lower Appellate Court has reversed this decree and the suit has been dismissed. Hence, the original plaintiff is before this Court in this second

appeal.

The Trial Court relied upon the sole testimony of the plaintiff and the documents produced by him, viz. the pass-book at Exhibit 21 showing the withdrawal of Rs.40,000/- on 27-11-2001, and Rs.10,000/- on 12-1-2002. The lower Appellate Court holds that there is absolutely no evidence to show that this amount was actually paid to the defendant by the plaintiff. The plaintiff submitted that one Jivraj Sharma was the person in whose presence the amount of Rs.40,000/- was paid to the defendant. However, the said Jivraj has not been examined as a witness by the plaintiff. The production of balance-sheet, which is not proved, is of no consequence in the absence of evidence of tendering of amount to the defendant.

Thus, there is no substantial question of law, which arises for consideration of this Court. The second appeal is dismissed. Consequently, the civil application for condonation of delay does not survive.

Judge.