

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

SECOND APPEAL NO.351 OF 2016

USHATAI SHRIDHAR TELRANDHE & ANR.

VS

KANTABAI SHRIDHAR TELRANDE

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

Court's or Judge's orders

Ms. Sonali Saware, Advocate for the appellant.
Shri D. K. Bhoyar Advocate for respondent nos.1 to 3.

CORAM : A.S. CHANDURKAR, J.

DATED : JULY 1, 2017.

In view of notice for final disposal issued earlier,
the appeal has been heard on the following substantial
question of law:

Whether the lower appellate Court
has committed an error in refusing
to condone the delay of 159 days
caused in filing an appeal?

The appellants are the original plaintiffs who
had filed suit for declaration that they were the legal heirs of
one Sridhar Telrandhe. It is the case of the appellants that
the appellant no.1 was married with said Sridhar Telrandhe
and appellant no.2 is their daughter. The respondent no.1
also claimed to be the wife of said Sridhar Telrandhe.
The suit for partition and declaration of legal status was
accordingly filed. The trial Court by judgment dated

28-11-2012 dismissed the suit. The appellants filed appeal on 25-6-2013 along with an application for condonation of delay. This application was rejected by holding that the delay was not explained. Hence, this appeal.

The learned Counsel for the appellants submitted that on account of insufficient funds, the appellants could not take steps for filing the appeal within limitation. It is submitted that the appellant no.1 was undergoing medical treatment since the year 2011 as she was suffering from AIDS. It is submitted that the delay as caused is not deliberate and the suit having been dismissed, there was no reason to unnecessarily delay the filing of the appeal.

The appeal is opposed by the learned Counsel for the respondents on the ground that no sufficient cause has been given by the appellants. Merely stating that their financial condition was poor was not sufficient. It is submitted that the appellants were negligent in prosecuting the matter.

Perused the application and the documents filed on record. The suit for partition and declaration of legal status has been dismissed. The documents filed on record indicate that the appellant no.1 was undergoing medical treatment since April, 2011. The suit having been dismissed,

the appellants did not derive any benefit by delayed filing of the appeal. As the proceedings would decide the legal status of the appellants, the contest on merits is warranted. Accordingly, the order dated 4-7-2014 passed in MARJE No.124/2013 is set aside. The delay in filing the appeal stands condoned. The appellate Court to decide the said appeal on its own merits. The substantial question of law stands answered accordingly.

The appeal is allowed in aforesaid terms. No costs.

JUDGE

/MULEY/