

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

Second Appeal No.415 of 2016

(Vasudeo s/o Bhaduji Revatkar (Dead), through LRs. Smt. Sakhubai Bhaduji Revatkar and others v. Balkrishna s/o Keshav Madavi (Dead), through LRs. Smt. Anantabai wd/o Balkrishna Madavi and others)

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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Shri A.S. Dhore, Advocate for Appellants.
Shri S.K. Soni, Advocate for Respondents.

Coram : R.K. Deshpande, J.

Date : 6th February, 2017

This second appeal is directed against an order dated 2-8-2016 passed by the lower Appellate Court rejecting an application for condonation of delay of 1 year, 2 months and 28 days (457 days) caused in filing regular civil appeal challenging a decree passed by the Trial Court in Regular Civil Suit No.33674 of 2001 on 3-7-2014. The Trial Court grants a declaration that the plaintiff is the lawful owner of the suit property, and the defendants are directed to put the plaintiff in vacant possession of the suit property. The Trial Court has further granted a declaration that the mutation in the name of Dama Dewaji Gond is unlawful and illegal.

The undisputed factual position is that the defendants

though filed the written statement in the suit in question, there was no further participation in the proceedings either by way of cross-examination of the plaintiffs or leading evidence in support of the contentions raised by the appellant-defendants in the written statement. The Trial Court passed a decree on 3-7-2014, and the regular civil appeal was preferred on 26-11-2015 along with the application for condonation of delay.

In the application for condonation of delay, it is averred in para 3 as under :

“3) It is pointed out here that the present applicants were not aware about the impugned judgment and decree passed in R.C.S. No.3674 of 2001 and they have received the knowledge of the judgment and decree passed against them only after receipt of the knowledge of the execution proceedings filed by the non-applicants/respondents. Upon receipt of the knowledge of the execution proceedings, the applicants have engaged the present counsel to take necessary steps in order to give justice to them and the certified copies of the whole record were applied on 19/08/2015 for taking necessary action against the judgment and decree. The record of the said suit has been received on 10/09/2015.”

The lower Appellate Court, after taking into consideration the decision of the Apex Court in the case of *N. Balkrishnan v. M. Krishnamurthy*, reported in (1998) 7 SCC 123, has held that there is no explanation for the delay caused in filing an appeal and there is no sufficient cause made out for condonation of delay in terms of Section 5 of the Limitation Act. The application for condonation of delay is rejected.

Before this Court, it is pointed out that after the judgment of the Trial Court was delivered on 3-7-2014, all the appellants were separately served with the notice of the caveat applications, and their acknowledgments received during the period from 21-7-2015 to 27-7-2015 are placed on record. The same are not disputed. It has, therefore, to be held that the appellants acquired the knowledge on 27-7-2015 of the decree passed by the Trial Court on 3-7-2014. There is no explanation furnished for the period from 21-7-2015 to 26-11-2015 when the appeal was filed. The appellant-defendants have suppressed the fact of receipt of the caveat applications and a false statement is made in para 3, reproduced above, that it is for the first time they received the knowledge of the decree passed by the Trial Court only after receipt of getting knowledge of the execution proceedings filed by the respondents. The date of receipt of knowledge of the execution proceedings has also not been

mentioned in the application. In view of this, even if the explanation is accepted that the counsel engaged by the appellant-defendants became untraceable and, therefore, neither did represent them in the Trial Court, nor did communicate them the decision of the Trial Court, the delay caused cannot be condoned in the absence of any explanation from 27-7-2015 to 26-11-2015.

Shri Dhore, the learned counsel for the appellants, submits that the suit itself is barred by the law of limitation on the basis of the averments made in the plaint itself, which can be considered by this Court as a question of law in this second appeal. The claim of the plaintiffs is based upon the order dated 15-6-1996 passed by the Collector in favour of the plaintiffs declaring that the father of the plaintiffs – Keshav Madavi was the owner of the suit property, and after his death, the plaintiffs became the owners by way of succession. The Collector, therefore, renews the lease in respect of the suit property in favour of the plaintiffs. This order was carried by the appellant-defendants in appeal, which was also dismissed in default. The suit was filed in the year 1997, which was re-numbered in the year 2001, for declaration of title, which cannot be said to be barred by the law of limitation.

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

Judge.

Lanjewar