

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

CIVIL APPLICATION NO.929/2016 IN S. A. ST. NO.18739/2016

Sau. Sumitra Prakash Bhure ..vs.. Mahadev s/o Kashinath Mahure & anr.

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

Court's or Judge's orders.

Mr. H. Tejawani, Advocate for applicant.

Mr. B. M. Kharkate, Advocate for non applicant no.1

CORAM : V.M. DESHPANDE, J.

DATED : NOVEMBER 28, 2017

1. This is an application for condonation of delay in filing the second appeal. The delay for preferring the second appeal to challenge the judgment and decree dated 04.12.2010 is 2012 days and therefore this application for condonation of delay is moved.

2. Heard Mr. Hemant Tejawani, learned counsel for the applicant and Mr. B. M. Kharkate, learned counsel for the non applicants. The application for condonation of delay is filed on 06.09.2016 along with memo of second appeal. In the application it is stated that the husband of the applicant suffered stroke of paralysis and since there was nobody to take care of the husband of the applicant and minor kids, she was engrossed in taking care of her ailing husband and the kids. Medical treatment was there for about two years and thereafter she obtained certified copy and appointed a counsel in the year 2013 (February) and also handed over the brief to him. According to the

application, the counsel who was appointed, redirected the said matter to another counsel friend, who never filed the second appeal but he always used to inform that the matter is filed and orders are likely to be passed. It is further stated in the application that after inquiry it was revealed to her that no appeal is filed by the earlier counsel or by any other counsel to whom the said appeal was redirected. Not only that when the appellant approached to the counsel to take the brief, to her utter surprise, it was informed to her that the brief is misplaced and he has not preferred the appeal. The application further states that knowing this position, she again applied for the certified copies on 24.08.2016 and obtained the same on 30.08.2016 and appointed the new counsel and preferred an appeal.

3. The non applicants, on being noticed filed reply on 17.08.2017 in which it is pointed out that the applicant has not explained the delay properly and only vague submission about the health of her husband and misplacing of the brief is made. After this reply, further affidavit is filed on behalf of the applicant and the said affidavit is dated 18.09.2017. In this affidavit, it is stated on oath that her husband was ill and he was discharged from Trinity Nursing Home on 31.08.2011.

4. Even the premise of ill health of her husband is granted in favour of the applicant, the delay is explained only till 31.08.2011. The application and the subsequent

affidavit is totally silent and does not disclose the name of Advocate to whom the matter was entrusted. Further, a bald statement is made that the said Advocate has redirected the applicant to another advocate and that other advocate has misplaced the brief, without disclosing the name of any advocate. Thus, for obtaining the order of condonation of delay, the applicant wants the Court to believe her words that it was the fault of the advocate. It is very easy to make blame an advocate behind his back. No name of the any advocate is disclosed in the application. On a query made to the learned counsel for the applicant as to whether the applicant has taken any steps against the said erring advocate, the answer is in the negative.

5. In that view of the matter, merely because the some bald statements are made against the advocate that is not sufficient, in my view, for condonation of delay when there is nothing on record to show that from 2011 till 2013 what steps were taken by her. Hence, the applicant has utterly failed to explain the delay from 2011 to 2013 and from 2013 onwards for the reason that all the submissions are bland and vague and therefore no relief can be granted in favour of such litigant who has slept over her rights.

The application is therefore rejected. No order as to costs.

JUDGE