

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

Civil Application No. 392/2017
in Second Appeal Stamp No. 20343/2017

Smt. Sardadevi wd/o Devidin Gupta Thr. L.Rs. Govind Devidin Gupta and
another

V/s
Jayshree w/o Avinash Banait

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

Court's or Judge's orders

Shri S.N.Bhutada, Advocate for applicants.
Dr. R.S. Sundaram, Advocate for the non-applicant.

CORAM : A.S. CHANDURKAR, J

DATED : 17th JULY, 2017.

Civil Application No. 392/2017

By this application, it is prayed that the delay of 44 days in filing the Second Appeal be condoned. In the application, it is stated that the judgment of the first Appellate Court was delivered on 01/04/2016 and application for certified copy was made on 02/04/2016. The certified copy was received on 9/5/2016. A writ petition challenging the judgment of the first Appellate Court was filed on 29/06/2016. The registration of that writ petition came to be refused on 16/08/2016. Thereafter the second appeal was filed on 20/09/2016.

It is submitted on behalf of the applicant that though steps had been taken within the period of limitation to challenge the judgment of the first Appellate Court, however,

it was subsequently realized that the second appeal was required to be filed. The reasons why the second appeal could not be filed within limitation are mentioned in para-4 of the application. It is urged that the delay as caused is not deliberate and the same deserves to be condoned.

The application is strongly opposed by the respondent. It is submitted by the learned counsel for the respondent that the applicants merely applied for certified copy of the judgment of the first Appellate Court. Certified copy of the decree was applied after the period of limitation and it was received on 28/12/2016. It is then submitted that the applicants have not been diligent in prosecuting the proceedings and reasons mentioned in the application are not sufficient to condone the delay. Reliance has been placed on the judgments of the Hon'ble Supreme Court in the case of Pundlik Jalam Patil (Dead) by Lrs. V/s Executive Engineer, Jalgaon Medium Project and another reported in (2008) 17 SCC 448 and Balwant Singh (Dead) V/s Jagdish Singh and others reported in (2010) 8 SCC 685. It is submitted that in the light of the law laid down, the delay does not deserve to be condoned.

Perused the application and reply filed thereto. The facts on record indicate that after the judgment of the first Appellate Court, certified copy of the judgment was applied

on 2/4/2016. After receiving the same, the applicants filed a writ petition challenging that judgment on 29/06/2016. The writ petition was not prosecuted and its registration came to be refused on 16/8/2016. The period of 90 days for preferring the appeal expired on 07/08/2016 and the present appeal was filed on 20/09/2016.

Though it is a fact that the certified copy of the decree was not applied for alongwith the certified copy of the judgment of the first Appellate Court, the other steps taken by the applicants to challenge the impugned judgment indicate their intention of seeking legal redress. This was done before the expiry of period of limitation. The reasons mentioned in para-4 of the application though denied are not of such nature that they indicate lack of bonafides on the part of the applicants. Though it is true that the expression “sufficient cause” should be liberally construed, the reasons for cause of delay and the conduct of the party is also required to be taken into consideration. Considering aforesaid aspects and in the light of the law laid down in the judgments, I find that the delay in filing the second appeal deserves to be condoned.

Hence, the application is allowed. The delay in filing the second appeal stands condoned.

Second Appeal St. No. 20343/2017

Put up for admission on 01/08/2017.

JUDGE

Nandurkar