

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

Civil Application (CAS) No. 73/2017
in
Second appeal St. No.24868/2016

Pradeep s/o Namdeo Bhalerao ...Vs.. Namdeo s/o Panjabrao Bhalerao and ors.

Office notes, Office Memoranda of
Coram, appearances, Court's orders
or directions and Registrar's orders.

Court's or Judge's Orders.

Shri A.M. Ghare, Advocate for Applicant.
Shri D.K. Dubey, Advocate for Respondent No.3
Shri P.S. Gawai, Advocate for Respondent No.1 & 2.

CORAM : A.S.CHANDURKAR, J.
DATE : 12/12/2017

Civil Application No.73/2017

By this application, it is prayed that the delay in
filing the Second Appeal be condoned.

The applicant is the original plaintiff who has
filed the suit for declaration that the sale deed dated
03/02/1999 was null and void. This sale deed was executed
by non-applicant no.1 in favour of non-applicant no.3. The
trial Court partly decreed the suit. The appellate Court
however allowed the appeal filed by the non-applicant no.3
and dismissed the suit. The judgment of the appellate Court
is dated 28/04/2014.

In the application, it is stated that after the
judgment of the appellate Court, the applicant had sought

legal opinion from about three Advocates as to whether the suit should be filed for partition and separate possession or whether the judgment of the appellate Court should be challenged. The certified copies in the year 2014 were lost. After receiving the advise to file an appeal, the application for certified copy was made on 02/02/2016. The copies were received on 18/11/2016, after which the present appeal came to be filed. An additional affidavit in support of these contentions has been filed.

Reply has been filed on behalf of non-applicant no.3 opposing the aforesaid prayer. It is stated that the grounds as made out are vague and indicate that the applicant was not diligent. The limitation for filing the appeal expired in July, 2014 and the application for certified copies was made much later. It is therefore stated that the application deserves to be rejected.

After hearing the respective counsel for the parties and after perusing the impugned judgment, it can be seen that First Appellate Court in para-12 of its judgment has observed that the applicant ought to have sought the relief of partition and separate possession and until the same was done, no relief could be granted to the applicant. I find that the reason mentioned in the application that the applicant after taking advise of about three Advocates found

divergent opinions being given. The certified copies indicate that they were applied on 02/02/2016 and were received on 18/11/2016.

Though it is true that there is some delay in filing the appeal, I find that the reasons assigned are acceptable. Hence, subject to appellant paying costs of Rs. 3,000/- to the non-applicant no.3, the delay in filing the Second Appeal stands condoned. The costs be paid within four weeks from today.

The civil application is allowed in the aforesaid terms.

JUDGE