

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

Civil Application (CAS) No.466 of 2016

In

Second Appeal Stamp No.25384 of 2014

(Vinayak s/o Kisan Khobragade v. Ramesh Ganpati Medpalliwar (Dead),
through LRs. Sushila wd/o Ramesh Medpalliwar and others)

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

Shri A.J. Thakkar, Advocate for Applicant/Appellant.

Coram : R.K. Deshpande, J.

Date : 15th February, 2017

This application is for condonation of 43 days' delay caused in filing the second appeal.

The Trial Court passed a decree for removal of encroachment and possession of the suit property to the plaintiff. The lower Appellate Court has concurred with it. Thus, the original defendant is before this Court against the concurrent findings of fact recorded by both the Courts below.

In earlier round of litigation, the Trial Court relied upon the document at Exhibit 52, which is a measurement map filed by the plaintiff. It was prepared by the TILR, Chamorshi on 23-5-2005. In Regular Civil Appeal No.71 of 2008, the lower Appellate Court held that the Trial Court should have appointed

the Court Commissioner to carry out the measurement. Accordingly, on remand of the matter back to the Trial Court, the Court Commissioner was appointed. The TILR, Chamorshi submitted his report at Exhibit 103 and the map at Exhibit 118. Both these documents are relied upon by the Trial Court as well as by the lower Appellate Court to hold that the encroachment has been proved, and accordingly, a decree for possession has been confirmed by the lower Appellate Court. In the absence of any challenge/objection to the report at Exhibit 103 and the map at Exhibit 118 by any of the parties, the Courts below have relied upon the same to pass a decree.

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

Judge.

Lanjewar