

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

CIVIL APPLICATION (CAS) NO.566 OF 2017

IN

SECOND APPEAL (STAMP) NO.1793 OF 2017

(The General Manager, Ordnance Factory, Chanda ..vs.. Smt. Vimal wd/o Bijaram Kamatwar and others)

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

Court's or Judge's orders

Smt. Mugdha R. Chandurkar, Counsel for the appellant,
Shri N.S. Warulkar, Counsel for respondent 1,
Shri D.M. Kakani, Counsel for respondent 3.

CORAM : ROHIT B. DEO, J.

DATED : 19-11-2018

The appellant is seeking condonation of delay of 661 days in preferring the second appeal.

2. Pertinently, the order which is impugned is the order dated 30-12-2014 passed by the learned District Judge-1, Warora in Miscellaneous Civil Application 41/2012, by and under which the appellate Court refused to condone the delay of 233 days in preferring appeal challenging the judgment dated 28-11-2011 in Miscellaneous Judicial Case 22/2009.

3. Miscellaneous Judicial Case 22/2009 is an application under Section 372 of the Indian Succession Act preferred by non-applicants 1 and 2 who claimed to be the legal heirs of deceased Bijaram Kamatwar, an employee of the appellant. The present non-applicant 3

Smt. Manda is impleaded in the miscellaneous judicial case as the divorced wife of deceased Bijaram. By judgment dated 20-11-2011, the application under Section 372 of the Act is partly allowed and it is declared that both the wives of the deceased shall be entitled to the family pension in equal proportion. Perusal of the judgment would reveal that the application is partly allowed on the basis of a statement made by the counsel appearing on behalf of non-applicant 3 herein that non-applicant 3-who is impleaded in the application under Section 372 of the Act as divorced wife, has no objection if the family pension is distributed between non-applicant 3 and non-applicants 1 and 2. Similarly, the learned A.P.P. who appeared on behalf of the present applicant also stated that he did not have any objection to such an arrangement.

4. Notwithstanding the stand taken on behalf of the employer-Ordnance Factory, Chanda in the miscellaneous judicial case, it appears that the employer-Ordnance Factory sought to prefer an appeal and sought condonation of delay, which is refused by the order impugned. Having perused the justification, which is that time was taken to obtain the permission of the superior officers to prefer the second appeal, this Court does not find that the delay of 661 days is satisfactorily explained. The apprehension expressed by the learned Counsel for the applicant Smt. Mugdha Chandurkar that

the judgment in miscellaneous judicial case is contrary to law and service rules and would set a bad precedent can be allayed by clarifying that the judgment is a judgment on admission, given in the peculiar facts of that case and the fact that this Court is not inclined to condone the delay in preferring the second appeal would not be construed as approving the view taken by the trial Court.

5. Civil Application 566/2017 seeking condonation of delay is dismissed.

JUDGE

adgokar