

FARAD CONTINUATION SHEET No.
IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR

C.A.S. NO. 138/2018 IN SECOND APPEAL STAMP NO. 1979/2018
 (KALIDAS LAXMANRAO BHUSHANWAR (DEAD) THR. LR's KAPIL KALIDAS BHUSAHANWAR & OTHERS
VERSUS SURESH RAGHOBHA MUNGALE)

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

Court's or Judge's orders

Shri Bhushan Dafle, counsel for applicants.
 Shri Rohit Joshi, counsel for non-applicant.

CORAM : A.S. CHANDURKAR, J.

DATE : OCTOBER 31, 2018.

Prayer is to condone delay in filing the second appeal.

In the application, it is stated that the father of the present applicant no.1 was the defendant in the suit for specific performance filed by the non-applicant. After his death, the legal heirs were not aware of the proceedings and they were not informed about the pendency of the appeal before the appellate Court. After receiving notices in the execution proceedings they got knowledge about the same and hence proceeded to file the appeal.

Reply has been filed on behalf of the non-applicant stating therein that in the execution proceedings, notices were issued to all the present applicants and they were served on 07.10.2016. This indicated knowledge of the present proceedings and therefore the delay caused has not been explained.

Thereafter, the applicants have filed additional affidavit stating therein that all the notices that were issued by the executing Court were received by the wife of applicant no.1A. However, as she was pregnant she went to her parental home without disclosing this fact. It is therefore prayed that in these facts, delay be condoned.

On hearing the learned counsel for the parties and on perusing the documents on record, it is found that all the registered notices issued by the executing Court have been received by the same person on 07.10.2016. This aspect has been explained by the applicants in the additional affidavit. The reasons assigned appear to be acceptable. However, it would be necessary to compensate the non-applicant as a condition for condoning the delay. Accordingly, the delay in filing the second appeal stands condoned subject to costs of Rs.5,000/- to be paid by the applicants to the non-applicant within a period of four weeks from today.

On aforesaid terms, civil application is allowed and disposed of.

JUDGE

APTE