

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

Second Appeal No.182 of 2016

(Sudhakar Patiram Zade .vs. Gulab s/o Patiram Zade and others.)

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

Court's or Judge's orders.

Mr. S.M. Karkare, Advocate for Appellant.
 Mr. S.A. Deole, Advocate for Respondent No.1.

CORAM : Manish Pitale, J.
DATED : April 09, 2018.

By this appeal, the appellant has challenged order dated 15.02.2016 passed by the Court of District Judge (Appellate Court), whereby application for condonation of delay in filing appeal has been rejected, as a consequence, there is no consideration of the case of the appellant on merits by the appellate Court.

2. The appellant had filed appeal along with application for condonation of delay to challenge judgment and order dated 17.06.2013 passed by the Court of Civil Judge, Junior Division, Mouda (trial Court). By the said judgment and order, the suit for partition and separate possession filed by the respondent Nos. 1 to 3 had been partly allowed. It was held that the suit properties, including property at Survey No.47 were ancestral properties.

3. It is the case of the appellant that there was a compromise that was arrived at during the pendency of the proceedings before the trial Court and that a pursis showing such compromise dated 14.09.2012 was indeed filed before the trial Court. Being an old person of about

81 years of age, the appellant was under the impression that once such a compromise had been arrived at and a pursis had been filed upon which parties had affixed their signatures, nothing further was required to be done before the trial Court. But, as pointed out by the respondents, the aforesaid compromise never attained finality because all the parties to the suit were not signatories to the said pursis. In fact, the trial Court records in its judgment and order at paragraph No.11 that there was an attempt of compromise between the parties but since all the parties had not signed the same, it could not be taken into consideration.

4. In the application for condonation of delay filed before the appellate Court, the delay being of 1 year 11 months and 2 days, it was submitted on behalf of the appellant that when he received notice dated 6.11.2015 from the Tahsil Office, as a consequence of the decree passed by the trial Court, that he became aware about the fact that the trial Court had proceeded to consider and decide the suit filed by respondent Nos. 1 to 3 on merits. Upon this, according to the appellant, he contacted his Advocate on 26.11.2015 and thereafter immediately filed an appeal and application for condonation of delay on 02.12.2015. It was also contended on behalf of the appellant before the appellate Court that being an old person of about 81 years old, he was suffering from hypertension and amnesia (loss of memory) and that, therefore, the delay deserved to be condoned.

5. By the impugned order, the appellate Court has recorded the two reasons given by the appellant seeking condonation of delay, but, it has proceeded to hold that delay of 1 year 11 months and 2 days (about 803 days) could not be condoned in a routine manner and that the explanation offered on behalf of the appellant did not sufficiently explain the huge amount of delay that had occurred. On this basis, the appellate Court has rejected the application for condonation of delay, filed on behalf of the appellant.

6. Upon the appellant approaching this Court challenging the impugned order, on 18.04.2016, the following substantial question of law was framed by this Court while issuing notice to the respondents:-

“Whether the Appellate Court has taken into consideration all relevant facts while refusing to condone delay in filing the appeal?”

7. **Admit**, on the said substantial question of law. Heard finally with the consent of parties.

8. A perusal of the record shows that there was indeed an attempt of compromise between the parties, who belonged to the same family, before the trial Court which is evidenced by the pursis dated 14.09.2012 filed before the trial Court. It is a different matter that the said compromise never turned into a compromise decree because all the parties before the trial Court were not signatories to the said compromise pursis. It appears that due to old age and failing health, the

appellant could not keep track of the proceedings before the trial Court. The respondents have also not been able to dispute that there was an attempt of compromise and further that the appellant is indeed an old man suffering from certain ailments.

9. In this backdrop it appears that the appellate Court has not appreciated the facts in the present case properly in order to consider the application for condonation of delay. Considering the fact that the dispute is between members of the same family and that the endeavour of Court ought to be to decide disputes between parties on merits, this Court is of the opinion that the instant appeal deserved to be allowed.

10. Accordingly, this appeal is allowed. The application for condonation of delay filed on behalf of the appellant before the appellate Court is allowed and delay is condoned. The appellate Court is directed to take up appeal filed by the appellant for consideration on merits. Since the appellant is a senior citizen aged about 81 years and the respondents are also interested in disposal of the appeal in an expeditious manner, the appellate Court is directed to dispose of the appeal within a period of six months from the date when a copy of this order is produced before the appellate Court.

11. Appeal is disposed of in above terms. No order as to costs.

JUDGE