

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

CIVIL APPLICATION (CAS) NO.606 OF 2018
IN
SECOND APPEAL ST. NO.7424 OF 2018

Balkrushna Murari Kar, Boargaon, Pardagaon, Bramhapuri, Dist. Chandrapur

-vs-

Shrikrushna Laxman Kar (Dead) Kamlabai Shrikurshna Kar 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. A. Dhawas, Advocate for applicant/appellant.
Shri N. B. Ramteke, Advocate for non-applicants.

CORAM : A.S.CHANDURKAR, J.
DATE : October 22, 2018

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

In the application it is stated that judgment of the appellate Court was passed on 21/12/2016. The applicant who is aged about 70 years was not keeping good health and hence was undergoing treatment in the Government Hospital since 02/02/2017. The applicant undertook regular treatment and thereafter on 05/01/2018 he was found fit to carry out further activities. Thereafter the present appeal has been filed. An additional affidavit has been filed in which it has been stated that the actual age of the appellant is 72 years and it has been inadvertently stated in one of the Certificates that his age is 62 years. It is thus stated being the sole appellant the delay in filing the appeal deserves to be condoned.

Reply has been filed on behalf of the non-applicant opposing the application. It has been stated that though the

first Medical Certificate is dated 02/02/2017 the appeal could have been filed prior to that date. Similarly it is not possible that the age of the applicant was wrongly shown as 62. In absence of any sufficient cause being shown the delay was not liable to be condoned.

Heard the learned counsel. Perused the Medical Certificates filed on record. The Certificate dated 02/02/2017 indicates the age of the applicant as 72 years in which it has been stated that the applicant was advised complete bed rest. The subsequent certificate dated 05/01/2018 indicates the age as 62 years. However in the light of an additional affidavit filed by the applicant in which it is stated that he is actually aged 72 years, that affidavit deserves to be accepted. In so far as filing of the appeal prior to 02/02/2017 is concerned, on the said date the period of limitation was yet to expire as judgment of the appellate Court is dated 21/12/2016.

It is found that the reasons given by the sole applicant are acceptable and an adjudication on merits is warranted.

Hence the delay in filing the Appeal stands condoned.

Civil Application is allowed and disposed of.

JUDGE