

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

CIVIL APPLICATION (CAS) NO.1591 OF 2017
IN
SECOND APPEAL STAMP NO.10888 OF 2017

(Shakuntala w/o Roopchand Bondre Vs. Roopchand s/o Sitaram Bondre and others)

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

Court's or Judge's orders.

Shri V.R. Choudhari, Advocate for Appellant.
Shri V.D. Muley, Advocate for Respondent 10.

CORAM: ROHIT B. DEO, J.
DATE: 10th DECEMBER, 2018.

Heard.

2] The applicant – who is the original defendant 3 is seeking condonation of delay of 916 days in preferring appeal challenging the judgment in Regular Civil Appeal 42/2007.

3] Perusal of the application seeking condonation of delay would reveal that virtually no reasons or justification is pleaded for the gross delay. Paragraph 5 of the application reads thus:

5) *In view of the above state facts and law applicable to the case the applicant/appellant is having a good case and is likely to succeed in the appeal. The applicant/appellant submits that the applicant could not file the present appeal as the applicant/appellant though having a good case but a poor lady could not arrange for the funds for filing the second appeal before this Hon'ble Court*

as the applicant/appellant is not well educated and with a great difficulties could passed 6th Std. and is a resident of small village, therefore she is not well vested in respect of law. The appellant submits that in view of the above stated facts there is a delay of 828 days.

4] The applicant has however, filed on record an additional affidavit to the effect that she has studied only till 4th standard. A bald statement is made in the affidavit that she could not file appeal due to poverty and lack of education. Be it noted, that the other defendants who have suffered the judgment have not challenged the same. I am not persuaded to hold that the delay is satisfactorily explained. However, in order to satisfy my conscious, I have perused the material on record to ascertain whether the applicant – original defendant 3 is in a position to demonstrate at least an arguable case on merits and having done so, I do not find that any substantial question of law is involved.

5] Dama died in 1989 leaving behind two widows Bhagubai and Gangabai it is not in dispute that both Bhagubai and Gangabai are legally wedded wife of Dama. The present applicant Shakuntalabai and Vatchhalabai are daughters of Gangabai while the original plaintiff Lalitabai and Jaibai are daughter of Bhagubai. The entitlement of the original plaintiff as natural legal heir was disputed on the assertion that Dama left behind will bequeathing the property in favour of Gangabai. Both the courts have concurrently held that the will is not proved. The original

will was not produced in the court and the application to adduce secondary evidence to prove the photo copy came to be rejected by the trial court. It is further noted that Dama was blind when the alleged will came to be executed on 28.11.1986. Be that as it may, having perused the judgments of the courts below, it is apparent that the trial court was right in rejecting the application seeking permission to adduce secondary evidence. If the alleged will is ignored, and the will is rightly ignored by the courts below, it is irrefutable that the plaintiff Lalitabai has share in the property left behind by Dama.

6] The application for condonation of delay is thus without substance and is rejected.

JUDGE