

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

CIVIL APPLICATION (CAS) NO.1314 OF 2017
IN
SECOND APPEAL ST. NO.14249 OF 2017

Manorama w/o Dattu Chopde and ors.

-vs-

Shrikrishna Shankar Dandge, Dist. Buldana

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

Court's or Judge's Orders.

Shri A. D. Bhate, Advocate for applicant.

Ms V. P. Thakre, Advocate for non-applicant.

CORAM : A.S.CHANDURKAR, J.

DATE : July 10, 2018

By this application it is prayed that the delay of 1802 days in filing the second appeal be condoned. In the application it is stated that the appellate Court decreed the suit on 18/04/2012. According to the applicants they were informed that heavy expenditure would be required for filing an appeal and hence they did not prefer to challenge that judgment. Similarly, the non-applicant was not using the suit way but was using another available way for approaching his field in 2012. When the non-applicant started obstructing the applicants in the year 2017, they moved the police Authorities and they got knowledge about the judgment of the appellate Court. Thereafter present appeal came to be filed.

Reply has been filed by the non-applicant opposing the aforesaid submissions. It is denied that obstruction

was caused to the applicants as alleged.

The applicants have subsequently filed further affidavits seeking to substantiate the stand taken in the application.

The learned counsel for the applicants reiterated the contentions as raised in the application and the affidavits by submitting that as the applicants have a good case on merits, the delay deserves to be condoned.

Heard the learned counsel for the parties. Though in paragraph 3 of the application it has been stated that the applicants got knowledge about heavy expenditure that was likely to be caused for filing appeal, no particulars in that regard have been stated either in the application or the subsequent affidavits. Similarly, the stand that the non-applicant was not using the suit way despite a decree in his favour cannot be accepted. The non-applicant having succeeded before the appellate Court and a decree having been passed in his favour, it is not normally expected that a successful plaintiff would not use the suit way as granted but would use some other way. I find that both the reasons assigned in the application do not constitute sufficient cause for condoning the delay of 1802 days. In that view of the matter, the application stands rejected.

JUDGE