

IN THE HIGH COURT OF JUDICATURE AT BOMBAY:**NAGPUR BENCH : NAGPUR****Civil Application [CAO] No. 1130 of 2017****IN****Misc. Civil Application [Resto.] St. No. 15858 of 2017****IN****Rejected Second Appeal No. 63 of 2006****[Moredhwaj Durgaprasad Pande [dead] through proposed L.Rs. & another Vs. Ramdeobaba Smarak Sarvajani Samiti & another]**

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

Mr. S. A. Radke, Adv., for the applicants.

Mr. M. G. Bhangde, Sr. Adv. With Mr. S. n. Tapadia, Adv., for non-applicant no.1.

CORAM : A. S. CHANDURKAR, J.**DATE : 20th February, 2018**

By this application, it is prayed that delay of about 4246 days in filing the application for restoring the Second Appeal be condoned. In the application, it is stated that the Second Appeal came to be dismissed for non-removal of office objections on 17th November, 2005. The original appellant expired on 30th October, 2013. The applicants who claim to be the widow and daughter of the original appellant have stated that they got knowledge about the proceedings when the applicant no.2 found some paper, after which enquiries were made and knowledge of the present proceedings

was obtained. It is, therefore, prayed that the delay deserves to be condoned.

By filing an additional affidavit, the applicants have placed on record the synopsis and Memorandum of Appeal of the Second Appeal which, according to them, are the papers found by the applicant no.2.

Reply has been filed on behalf of the non-applicant no.1. It is stated that the original appellant during his lifetime did not take any steps for almost eight years. The subsequent explanation sought to be furnished is not sufficient for condoning the enormous delay. Hence, the delay does not deserve to be condoned. A counter-affidavit has also been filed on behalf of the non-applicant no.1.

Perused the application and additional affidavit along with the reply and counter-affidavit.

The original appellant who had filed the Second Appeal is not shown to have taken any steps for the period of almost eight years during his lifetime. The Second Appeal was dismissed on 17th November, 2005 and the original appellant expired on 30th October, 2013. In absence of any such steps being taken by the original appellant, aforesaid period of delay does not stand explained. In so far as the other explanation given by the applicants regarding some paper being found by

them is concerned, that itself is not sufficient to condone the delay of about 4246 days. I am, therefore, not satisfied that sufficient cause has been shown by the applicants. The application is, therefore, rejected. No costs.

Judge

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