

FARAD CONTINUATION SHEET No.
IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR

C.A.S. NO.896/2018 IN SECOND APPEAL STAMP NO. 15875/2018
 (SHAMRAO SADHU SONTAKKE VERSUS GOPICHAND LATARU MADANKAR & ANOTHER)

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

Court's or Judge's orders

Shri S.A. Marathe, counsel for applicant.
 Shri N.B. Kalwaghe, counsel for non-applicants.

CORAM : A.S. CHANDURKAR, J.
DATE : OCTOBER 17, 2018.

By this application, it is prayed that the delay of 2 Years 7 Months and 15 Days in filing the second appeal be condoned.

In the application, it is stated that the judgment of the appellate Court was delivered on 03.09.2015. By that decree, the suit for possession was decreed and the applicant herein was directed to handover possession of the suit property within a period of ninety days and also pay damages at the rate of Rs.200/- per day from the date of the suit till delivery of possession. According to the applicant, he was not aware about the said judgment and in January-2016, the non-applicant no.2 forcibly took possession of the suit property. It is further stated that after taking possession, the non-applicant no.2 assured the applicant that he would not proceed further in the matter and in view of that assurance nothing further was done. In December-2017, the applicant got knowledge of the execution proceedings when some persons had come to his house. The applicant therefore engaged the counsel who did not attend the execution proceedings. When the notice of proclamation of sale of the house was affixed on 20.07.2018, the applicant took steps and has thereafter filed this appeal.

Reply has been filed on behalf of the non-applicants denying the aforesaid statements. It has been stated that the execution proceedings were filed in April-2016 and the notices therein were served on the applicant in July-2016. The applicant appeared before the executing Court on 28.08.2016 and thereafter possession of the suit property was taken on 14.10.2016 through the bailiff. For executing the decree for damages, warrant was issued on 18.02.2017. By placing the *Roznama* on record, it has been stated that the applicant appeared before the Executing Court on 25.01.2017, 10.08.2017, 25.09.2017 and 14.02.2018. It is thus stated that in absence of sufficient cause and incorrect statements made, the delay does not deserve to be condoned.

Heard the learned counsel for the applicant, who by relying upon the decision in *Vedabai alias Vaijayantabai Baburao Patil Versus Shantaram Baburao Patil & Others* [(2001) 9 SCC 106] submitted that in the light of the statements made in the application and by adopting a liberal approach, the delay deserves to be condoned. It is stated that the applicant has also filed an affidavit stating therein that he does not intend to challenge the decree for possession and seeks to restrict his challenge to the decree for damages.

The learned counsel for the non-applicants on the other hand has relied on the decision in *Basawaraj & Another Versus Special Land Acquisition Officer* [(2013) 14 SCC 81] to urge that in absence of any sufficient cause being shown, mere fact that hardship would be caused would not be a reason to condone the delay.

On considering the submissions as urged and on perusing the *Roznama* of the case, it is found that the applicant had participated in execution proceedings on various occasions pursuant to which possession was taken on 14.10.2016. Though in the application it is stated that forcible possession was taken in January-2016, there is no material to substantiate that contention. The various dates on which the applicant was present before the executing Court indicate knowledge of the execution proceedings. Even though the warrant of attachment was issued on 18.02.2017, the present appeal has been filed on 18.07.2018 without the delay as caused being sufficiently explained. The question of imposing any conditions on the applicant would arise subject to proper and sufficient explanation for the delay as caused.

In view of aforesaid, I do not find any sufficient cause to condone the delay. Civil Application is therefore rejected.

JUDGE

APTE