

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

CIVIL APPLICATION (S)1569 OF 2017

(Sau. Ushatai Ganeshrao Kadam..vs.. Sau. Ashatai Digambar Jadhav)

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

*Court's or Judge's orders.*

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Shri V.N. Patre, counsel for applicant.  
None for non-applicant.

**CORAM: ROHIT B. DEO, J.**

**DATE: 17<sup>th</sup> December, 2018.**

This is an application under section 5 of the Limitation Act for condonation of delay of 316 days in preferring Second Appeal.

2           The justification for the delay is stated to be the ill health of the father in law of the plaintiff. The averment in paragraph 3 of the application is that since the father in law of the plaintiff was undergoing treatment, the husband of the plaintiff did not contact the counsel till July 2017 and it was only then that the certified copy of the impugned judgment was obtained.

3           Be it noted that it is not the case of the applicant – plaintiff that she or her husband was not aware of the judgment of the first appellate Court dated 10.8.2016. If the averments in the application are read holistically, it is difficult to believe that the plaintiff was not in a position to challenge the judgment of the first appellate Court, in time.

4           It is then submitted that the applicant – plaintiff was also keeping unwell. In the application, no details of the period of the treatment are disclosed. A vague averment is made that the plaintiff is suffering from “decease of bones”. The medical prescription which is placed on record is dated 5.1.2016. There is absolutely no material on record to conclude that the applicant – plaintiff was not keeping good health from 10.8.2016 onwards or that she was prevented from preferring the appeal.

5           No case is made out for condonation of delay.

6           However, I have also perused the judgments of the Courts below in order to ascertain whether the applicant – plaintiff has made out a prima facie case which ought to impel this Court to condone the delay and hear the appeal at some length, on admission. Having done so, I am of the considered opinion that the concurrent finding of fact recorded by the Courts below are unexceptionable.

7           The bone of the contention is agricultural field admeasuirng 3 hectors 0.3 R. Concededly, Madhav, Dattarao and Yadavrao were brothers. The plaintiff is the daughter of Madhav and the defendant is the daughter of Dattarao. Yadavrao has two sons namely Avdhoot and Arvind.

8           The finding recorded is, and which finding is

based on evidence on record that Madhav, Dattarao and Yadavrao were in cultivating possession of land admeasuirng 5H 43R. It is irrefutable that the said land was divided between plaintiff, defendant and two sons of Yadavrao. The suit land admeasuring 3H 0.3R fell to the share of the plaintiff and defendant who came to be recorded as the joint owners of the said land in the revenue record.

The case of the plaintiff is that out of land admeasuring 3H 0.3R, land admeasuring 1.61R was leased by the plaintiff and the defendant to Ramdas. The plaintiff contends that the remaining land was then partitioned between two sisters and land admeasuring 0.71R fell to her share. The subsequent partition is not accepted by the Courts below, with the result a finding is recorded that the plaintiff and defendant are the joint owners of land admeasuirng 1H.41R and decree of partition and separate possession is passed accordingly. It does not appear that there is any question of law involved in the Second Appeal. In this view of the matter, I am not inclined to show any indulgence to the applicant – plaintiff who even otherwise has not made out a case for condoning the delay of 316 days in preferring the appeal.

9           The application for condonation of delay is rejected.

**JUDGE**

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