

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

SECOND APPEAL NO. 408/2017

(SUSHILABAI RAMPRASAD TIWARI VERSUS MAHIPAL NATTHUSAOJI CHOUKSEY)

WITH

SECOND APPEAL NO. 409/2017

(SUSHILABAI RAMPRASAD TIWARI VERSUS MAHIPAL NATTHUSAOJI CHOUKSEY)

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. Chaudhari, counsel for the appellant.
Shri A. Gharote, counsel for the respondent.

CORAM : A.S. CHANDURKAR, J.

DATE : JULY 24, 2018.

The appellant is the original defendant in the suit for specific performance that was filed by the respondent herein. The trial Court by its judgment dated 30.08.2013 decreed the suit for specific performance. The respondent filed two appeals on 11.02.2016 along with applications for condonation of delay. In the applications, it was stated that the defendant was not informed about the adjudication of the civil suit. The knowledge was received only in the month of January-2016, after which steps were taken to file the appeals. The applications were accompanied by a medical certificate as according to the defendant, she was undergoing treatment. The appellate Court after considering the material on record found that there was no sufficient cause to condone the delay of a period of more than two years. The applications were therefore dismissed. Being aggrieved, these appeals have been filed. During pendency of the appeals, the defendant expired and on the strength of will dated 03.08.2016, the appeals are being prosecuted by the legatees.

The learned counsel for the appellant submitted that considering the reasons assigned by the original defendant coupled with the fact that the defendant was residing alone, the appellate Court ought to have accepted said reasons and condoned the delay. It was a fact that information was received with regard to the decree passed in the suit only in January-2016 after which the appeals came to be filed immediately. He submitted that the medical certificate filed on record indicated the ailments of the defendant. As substantial rights were involved, the delay was liable to be condoned.

The learned counsel for the respondent opposed aforesaid submissions. It was submitted that the appellate Court was not satisfied with the reasons furnished by the defendant as the cause of delay. The medical certificate also did not disclose the date of the accident which was alleged to have been suffered by the defendant. As the explanation was not found to be satisfactory, the delay was rightly not condoned.

Heard the learned counsel for the parties and perused the documents on record. The trial Court decreed the suits filed by the respondent on 30.08.2013. In the application for condonation of delay, it has been stated that the defendant got knowledge about the said decree only in January-2016. It is then stated that on account of illness and poverty there was a delay caused. The defendant relied upon the medical certificate. The appellate Court while considering this material found that the medical certificate did not disclose the date of the accident alleged to be suffered by the defendant. There were no documents relating to the defendant's treatment and therefore, that certificate was not found sufficient to condone the delay. Considering these aspects of the matter and in absence of any sufficient material on record, it cannot

be held that a case for condoning the delay has been made out. The fact that the delay is for a period of more than 27 months also cannot be ignored. Hence, no fault can be found with the orders passed by the appellate Court refusing to condone the delay. The explanation has not been found to be sufficient and that adjudication does not give rise to any substantial question of law.

Hence, the Second Appeals are dismissed. No costs.

JUDGE

APTE