

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

CIVIL APPLICATION (CAS) NO.73 OF 2018
IN
SECOND APPEAL ST. NO.24142 OF 2016

Hari s/o Vithu Wankhade (deceased) Thr. LRs Dalambhabai Hari Wankhede and ors.

-vs-

Maroti Tukaram Rampure (deceased) Nanebai Maroti Rampure and ors.

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

Court's or Judge's Orders.

Shri R.S. Nagpure, Advocate for applicants/appellants.
Shri A. S. Ghawde, Advocate for respondents.

CORAM : A.S.CHANDURKAR, J.
DATE : October 12, 2018

By this application it is prayed that the delay in filing the Second Appeal be condoned. In the application it is stated that the predecessor of the applicant who was the respondent in R.C.A. No.40/2011 was looking after the litigation. The judgment of the appellate Court dated 19/08/2013 was passed in favour of the original plaintiff and the suit for specific performance was decreed. The original defendant expired on 05/08/2014 however, his legal heirs were brought on record in the execution proceedings as per the order dated 07/11/2016. After being served with the notice to the execution proceedings the Second Appeal was filed. It is therefore prayed that the delay be condoned.

The application is opposed by the non-applicants on the ground that the defendant was residing along

with applicant Nos.1, 5 and 7 and therefore it cannot be said that they had no knowledge of the earlier adjudication. It is therefore submitted the reasons stated are not sufficient for condoning the delay.

Considering the fact that the appeal was allowed by the appellate Court on 19/08/2013 in which the predecessor of the applicant was the only respondent coupled with the fact that the record of the execution proceedings indicates that the legal heirs were brought on record as per order dated 07/11/2016, it is found that the appeal has been filed shortly thereafter. Hence accepting the reasons mentioned in the application, the delay in filing the appeal stands condoned.

Civil Application is allowed and disposed of.

JUDGE