

***IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION***

SECOND APPEAL NO.62 OF 2019

Narayan Dada Mahale ... Appellant
Vs
Shankar Pandurang Waghmare and Ors. ... Respondents
...

Mr. Tushar N. Sonawane for the Appellant.

CORAM : SANDEEP K. SHINDE J.

DATE : APRIL 22, 2019

P.C. :

Heard learned counsel for the appellant.

2 Appellant is original defendant no.5 against whom decree of possession has been passed by the learned Civil Judge, Junior Division, Nashik on 2nd May, 2015 in Regular Civil Suit No.613 of 2012.

3 Aggrieved by the decree dated 2nd May, 2015, appellant had preferred Regular Civil Appeal along with Civil Miscellaneous Application No.100 of 2016 seeking condonation of delay of 387 days occurred in preferring Regular Civil Appeal. This application was filed by the constituted attorney of the appellant.

4 The learned District Judge-2, Nashik declined to condone delay vide order dated 19th April, 2018. It is against this order, Second appeal is preferred.

5 Appellant had produced medical certificate issued by Dr. Prakash Jadhav dated 18th June, 2016, who was then attached to Mauli Nursing Home at Nashik, certifying that the appellant was suffering from Asthama/weakness and was advised bed-rest from June 01, 2015 to 18, 2016. Dr. Jadhav has certified that the appellant was treated as OPD patient and was unfit to resume duties. Except this certificate, the appellant did not lead evidence. The learned Judge found that certificate was not genuine. Besides, the impugned order refers to the fact that present appellant had opposed execution proceedings instituted by the respondent herein being Regular Darkhast No.29 of 2016 during his period of illness.

6 This appeal was heard by this Court on 27th March, 2019 and upon perusing the certificate issued by Dr. Jadhav, notice was issued to him with a request to submit medical case-papers showing

treatment given to the appellant. The learned Principal District Judge, Nashik was requested to ensure that medical case-papers are produced before this Court. In response thereto, report is submitted by the bailiff along with the certificate issued by Dr. Sanjay Bafna, who is proprietor of Mauli Nursing Home. Report is taken on record and marked '**X**' for **Identification**. Dr. Bafna has stated that Dr. Prakash Jadhav left the nursing home six months before and he does not know his whereabouts or such other particulars. Dr. Bafna has stated that treatment papers of the appellant are not available since he was treated in OPD department.

7 Be that as it may, certificate on its plain reading indicates that the appellant has obtained this certificate to save his appeal from being time barred. It is cyclo-styled certificate and period for which he was advised bed-rest has been issued to suit the requirement of the appellant herein. The decree was passed on 2nd May, 2015 and the application for certified copy was made on 7th June, 2016, which was received on 9th June, 2016. The appellant was advised bed-rest from 1st June, 2015 to 18th June, 2016. It clearly

shows that it was obtained by the appellant to suit his requirement. Therefore, ground on which delay is sought to be condoned is not genuine ground. Besides, the order indicates appellant had resisted possession warrant issued in Regular Darkhast No.29 of 2016 during the period of illness. Even otherwise, certificate by Dr. Sanjay Bafna shows that there was no record available about treatment given to the appellant herein.

8 Thus, for the reasons stated here-in-above, grounds on which delay is sought to be condoned are not genuine. Appeal is, therefore, dismissed with cost of Rs.25,000/- which the appellant shall pay to the Tata Memorial Hospital, Parel, Mumbai within two months from today. If said amount is not deposited, same shall be recovered from the appellant as arrears of land revenue through Collector, Nashik.

9 Registry to forward copy of this order to Nashik after thirty days, if cost is not deposited.

10 Place it on Board on 11th June, 2019 for compliance under the caption 'Directions'.

(SANDEEP K. SHINDE, J.)

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Since the appeal itself is disposed of, nothing survives in the civil application therein and the same is also disposed of.

(SANDEEP K. SHINDE, J.)