

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

CIVIL APPLICATION NO. 477 OF 2019
IN
SECOND APPEAL ST. NO. 143 OF 2019

Sudhakar s/o Gopichand Wankhede
..VS..
Dnyaneshwar s/o Govinda Moon and anr.

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

Court's or Judge's orders

Shri D.C. Chahande, Adv. for appellant.
Shri M.V. Rai, Adv. for respondents.

CORAM : VINAY JOSHI, J.
DATED : 8th NOVEMBER, 2019

Heard both sides on application of condonation of delay.

2. This is an application filed by the applicant/original plaintiff seeking condonation of delay of 776 days caused in filing the Second Appeal against the judgment and decree passed in the Regular Civil Appeal No. 179 of 2011 dated 01.08.2016. Initially, the appellant has filed the Regular Civil Suit No. 155 of 2002 in the Court of Civil Judge, Junior Division, Wardha for declaration as well as mandatory and permanent injunction. The suit was partially decreed vide judgment and order dated 21.07.2011. The learned Trial Court has issued declaratory decree by which the right of appellant to enjoy the disputed way was recognized. However, the learned Trial Court recorded a

finding that the plaintiff has failed to established that defendant has raised construction over the common way by encroachment, and accordingly, relief of injunction was refused.

3. Being aggrieved and dissatisfied by said judgment and order the original plaintiff has filed First Appeal No. 179 of 2011 which came to be dismissed on merit vide order dated 01.08.2016. The appellant has intended to challenge the order and judgment of the First Appeal. However, there happens to be delay of 776 days. He has thus prayed for condonation of delay.
4. It is urged that though the appellant's right of way is recognized by the Trial Court, however, due to dismissal of appeal the revenue authorities are not taking cognizance on his complaint about obstruction and therefore is required to file the appeal. It is urged that since the First Appeal was dismissed, the revenue authorities are not recognizing his rights, as well as there is encroachment on the land. The appellant canvass that due to such subsequent events he find it necessary to file Second Appeal and therefore, the delay is not deliberate and prayed to be condoned.
5. The other side resisted the delay by filing the reply dated 22.10.2019, it is contended that, the appellant has not made out any just or sufficient cause to condone the long delay which is running more than two years. It is canvassed that, if, there is a subsequent encroachment, the appellant is having statutory remedy under Section 53 of the Maharashtra Village Panchayats

Act, 1959. According to him if, any subsequent events occur, it gives separate cause of action, therefore delay does not deserves to condone.

6. It reveals that no sooner partial decree was passed, being aggrieved by rejection of claim of injunction, the plaintiff has assailed it by filing First Appeal but he failed. Though he was aware that as the partial claim was rejected by the Trial Court and the said finding was confirmed by the First Appellate Court, he never choose to file the Second Appeal consequently within stipulated period. The course adopted by appellant is based on subsequent events or inconveniences which he faces in enjoying the right of way. True the term sufficient cause has not been define in the law of limitation however, unless there are *bona fides* or the material is placed to show that some unavoidable reasons prevented to a party to approach the Court, delay can not be condoned. The appellant has not explained the long delay of two years, as to what prevented to him approach to the Court. Mere subsequent events will not construe as sufficient cause for appellant to seek condonation of delay, after dismissal of First Appeal. The valuable rights have been accrued in favour of the other side and it cannot be taken away by stretching the terms, sufficient cause out of the box. The appellant failed to make out sufficient cause, hence, I do not find any substance to condone the delay. Accordingly, the Civil Application is rejected. Consequently, the Second Appeal also stands **dismissed**. No costs.

7. However, the appellant is at liberty to approach the competent authority for removal of encroachment, if any. Dismissed of this application and Second Appeal shall not come in the way of the authorities to deal with said issue in accordance with law.

JUDGE

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