

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

CIVIL APPLICATION (CAS) NO. 492 OF 2019

IN

SECOND APPEAL ST. NO.2005 OF 2019

Kisan Sadu Chafale and anr.

..VS..

Sadu Rama Chafale (dead) thr. LR's Smt. Gangabai wd/o Sadu Chafale and ors.

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

Court's or Judge's orders

Shri Aditya Satpute, Adv. for applicants/appellants
Ms. Kavita R. Prajapati, Adv. h/f Shri H.D. Potbhare, Adv. For
respondents.

CORAM : VINAY JOSHI, J.

DATED : 18th NOVEMBER, 2019

Heard.

2. This is an application for condonation of delay of 430 days caused in filing the Second Appeal challenging the judgment and decree dated 10.08.2017 passed in R.C.A. No. 102 of 2009. The applicant has stated that initially, his suit for declaration and permanent injunction was dismissed. The said order was partially reversed in First Appeal by which the relief of injunction was only granted. The appellant submitted that, after modification of decree, he has moved to the Tahsildar for carrying mutation entry and on rejection, he filed revenue appeal before the Sub-Divisional Officer. According to the applicant, time was consumed in taking out the revenue proceedings after disposal of First Appeal. Besides that applicant/appellant has canvassed that he is residing in remote area quite away from Nagpur. He was facing financial difficulties. He sold Kharip crops and on getting money this Second Appeal is filed.

3. It is argued that, the appellant has every chance of success in the Second Appeal, since certain findings are recorded in his favor by the First Appellate Court.
4. The other side resisted this application by stating that the appellant has not made out sufficient cause for condonation of delay. The respondent has stated that the causes as has been canvassed by the appellant, are untenable and there are total lacks of *bona fide*. Precisely, the respondent resisted to condone the delay.
5. The respondent in resistance initially, relying upon the judgment of this Court in the case of *Dattu Bala @ Santu Patil vs. Maruti Bapu Patil and ors.* reported in **2019(4) Mh.L.J. 853**. In said case this Court has refused to condone the delay on the ground that the then party was not able to approach the Court due to lack of funds. On perusal of said judgment, it reveals that the then party had initially did not appeared before the Trial Court nor laid the evidence. There was delay of 291 days even in filing of First Appeal. Thereafter, again there was one year two months delay in filing the Second Appeal. Considering those facts, this Court has refused to condone the delay. The result of said proceedings was based on then facts which cannot be applied.
6. Secondly, the respondent relying upon the judgment of Apex Court in the case of *Basawaraj and anr vs. Special Land Acquisition Officer* reported in **(2013) 14 SCC 81**. In said case there was a delay of Five and Half

years which was not condoned. However, Apex Court has observed that, discretion to condone the delay has to be exercised judicially, based on facts and circumstances of each case. The Court cannot liberally interpret the terms, sufficient cause, if negligence, inaction or lack of *bone fide* are attributed to the party. Precisely, on the basis of given facts of each case, the aspect of delay is to be considered. In case at hand, the dispute relates to the immovable property. Apparently, the parties are agriculturist. It is not denied that after decision of the First Appeal, the appellant has moved to the Revenue Authority for his redressal which has consumed some time. Besides that, the appellant has canvassed the cause of residing in remote areas, lack of resources as well as funds. I do not see any *mala fides* or intentional act to cause delay.

7. Considering all these grounds, cumulatively, I find that it is appropriate to condone the delay. However, since the other side is required to fight one another round of litigation on condonation, they can be compensated. In view of that, delay caused in filing the Second Appeal stands condoned subject to costs of Rs.5,000/- (rupees Five Thousand only) to be paid to other side within four weeks from the date of this order. Failure on the part of applicant/appellant to deposit the costs of amount within stipulated period, the application will have effect of rejection.

8. The Civil Application stands disposed accordingly.

JUDGE