

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

MISC. CIVIL APPLICATION NO.412 OF 2019
IN
RC NO.315 OF 2019 (SAST NO.7754 OF 2019)

(Keshavrao Krishnarao Mankar Vs. Mohanlal s/o Ramkhilawan Yadav)

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

Court's or Judge's orders.

Shri S.G. Zinjarde, Advocate for Appellant.

CORAM: ROHIT B. DEO, J.

DATE: 8th APRIL, 2019.

Shri Zinjarde, the learned counsel for the appellant states that cost is paid.

2] Civil application is allowed.

3] Order dated 02.04.2019 is recalled.

Civil Application (CAS) No.361/2019:

This application is taken out by the original defendant in the suit for specific performance of contract seeking condonation of delay of 415 days in preferring the appeal.

2] Both the courts have concurrently held the plaintiff to be entitled to specific performance.

3] I am not satisfied with the justification pleaded in support of the prayer for condonation of delay.

4] However, only in order to ascertain whether the applicant – defendant has a strong *prima facie* case to

succeed in the appeal. I have heard Shri Zinjarde, the learned counsel for the appellant on merits.

5] Two submissions are made. The first submission is that both the courts below have erred in rejecting the defence that the suit transaction was a money lending transaction. Second submission is that since the property was mortgaged specific performance could not have been granted.

6] The first submission cannot be countenanced. A finding of fact is concurrently recorded. This Court would be loathe to disturb such finding of fact by re-appreciating evidence. The second submission is negated by the courts below holding that it is not proved that the suit property was mortgaged. Even if it is assumed that the suit property is mortgaged, I do not see any impediment in granting specific performance of contract. Ultimately the purchaser would take the property with the encumbrance.

7] Since the appeal does not involve any question of law much less substantial question of law, I do not see any propriety in condoning the delay, which even otherwise is not satisfactorily explained.

8] The application is rejected.

JUDGE