

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

CIVIL APPLICATION (CAS) 1168 OF 2018

IN

SECOND APPEAL ST.NO.13608OF2018

(Pandhari s/o. Nanu Kankate & anr..vs.. Premkumar s/o. Laduji Meshram)

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

Court's or Judge's orders.

Shri Anand Parchure, counsel for applicants.
Shri T.G. Bansod, counsel for respondent.

CORAM: ROHIT B. DEO, J.

DATE: 12th MARCH, 2019.

The applicants are the original defendants in Regular Civil Suit 50 of 1994 which was instituted by the respondent seeking decree of permanent injunction restraining the defendants from interfering with possession qua the suit property.

2 The trial Court dismissed the suit by judgment and decree dated 31.7.2002.

3 The plaintiff assailed the judgment and decree of the trial Court in Regular Civil Appeal 105 of 2002. By judgment dated 15.12.2005, the appellate Court allowed the appeal and decreed the suit.

4 The points framed and the findings recorded by the appellate Court are thus:

Sr.	Points	Findings
1	Whether the defendants have proved that the sale deed executed by Motisingh Shikh in favour of the plaintiff is null and void?	...No.
2	Whether the plaintiff has proved that he is in possession of the suit land?	...Yes.
3	Whether the plaintiff has further proved that the defendants have tried to obstruct his possession?	...Yes.
4	What order and decree?	...As per final order
5	This application is taken out for condonation of 4481 days (more than 12 years) in preferring the appeal under section 100 of the Civil Procedure Code.	
6	The justification pleaded was that the plaintiff – non-applicant herein had instituted revenue proceedings in the Court of Tahsildar which ultimately attained finality only on 27.2.2016. The applicants aver that since they are in continuous and peaceful possession of the suit property which is reflected in the revenue record, they were under bonafide presumption that their title is clear.	
7	The non-applicant – original plaintiff has filed on record an affidavit in reply dated 11.2.2019 rebutting every material averment in the application and asserting that there is no explanation much less satisfactory explanation for condonation of delay of more than 12 years in preferring the	

Second Appeal.

8 Having heard the learned counsel Shri Anand Parchure for the applicants and the learned counsel Shri T.G. Bansod for the non-applicant, I am satisfied that no cause much less sufficient cause is demonstrated for condoning the delay of more than 12 years in preferring the Second Appeal. It is not even the case of the applicants that they were not aware of the appellate judgment. The judgment of the appellate Court is unambiguous. The applicants were therefore aware that the appellate Court held that the non-applicant – plaintiff was in possession on the basis of valid sale deed. The applicants ought to have approached this Court assailing the appellate judgment within a reasonable period. The fact that co-lateral revenue proceedings initiated at the instance of the non-applicant were pending, is no ground not to assail the judgment in appeal.

9 The application is without substance and is rejected.

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In view of the rejection of the application for condonation of delay, no orders are necessary on this Civil Application.

JUDGE