

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

Second Appeal No.420 of 2019
(Bhikaji Bhalerao (Dead) through L.Rs. And others. .vs. Vatsalabai w/o Sheshrao Ingle)

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

Court's or Judge's orders.

 Mr. Anand R. Agrawal, Advocate for Appellants.
 Mr. S.R. Deshpande, Advocate for Respondent.

CORAM : Manish Pitale, J.
DATED : September 20, 2019.

In this appeal, the appellants (legal heirs of the original defendant No.1) have challenged order dated 21.06.2019 passed by the Court of District Judge-1, Buldana (appellate Court), whereby application for condonation of delay filed on behalf of the appellants in filing first appeal, has been rejected.

2. In the instant case, the respondent had filed a suit for specific performance of agreement against the original defendants. After filing of written statement, the predecessor of the appellants did not participate further in proceedings before the trial Court. It has come on record and it is an undisputed fact that the predecessor of the appellants sold the suit property during the pendency of the suit to certain purchasers.

3. The trial Court passed its judgment and order on 24.10.2007, granting decree of specific performance in favour of the respondent.

4. The documents on record show that when the decree was put to execution by the respondent, the aforesaid purchasers raised objections therein and despite service on the appellants in the execution proceedings, they failed to raise any objection. In fact two writ petitions bearing W.P.No.2649 of 2014 and 5355 of 2014 arising from the execution proceedings were heard and disposed of by this Court by orders dated 23.11.2016 and 14.09.2015, wherein the appellants were also parties. These writ petitions were contested by the said purchasers while the appellants chose not to appear and contest the writ petitions despite service.

5. Thereafter, on 18.12.2017, the appellants filed an application for condonation of delay and first appeal before the appellate Court to challenge the judgment and order dated 24.10.2007 passed by the trial Court in favour of the respondent. In the application for condonation of delay, it was claimed that the appellants first become aware about passing of the decree in favour of the respondent, when in the month of February, 2017 they came to know from villagers that the respondent was seeking to take possession of the suit property. It was claimed that thereafter steps were taken for approaching the Court.

6. By the impugned judgment and order, the appellant Court has taken into consideration the conduct of the appellants. It has been noted that the appellants were in fact served with notice issued by the Executing Court on 11.01.2008 and yet they failed to take any steps for about 9 years to approach the appellate Court

to file the appeal.

7. The orders passed by this Court in writ petitions show that the appellants were very much party to the said proceedings wherein orders were passed on 14.09.2015 and 23.11.2016 and hence the appellants could not claim ignorance about the decree having been passed against them. These circumstances clearly show that the statement made in the application for condonation of delay before the appellate Court that the appellants first became aware about the decree of the trial Court only in February, 2017, is clearly a wrong statement or at least it is not supported by the material available on record.

8. In this situation, the only contention raised on behalf of the appellants was that they were rustic villagers who were illiterate and that, therefore, the appellate Court should have sympathetically considered the application for condonation of delay.

9. But, this Court finds that no error could be attributed to the approach adopted by the appellate Court in the facts and circumstances of the present case. In view of the above, this Court finds that no substantial question of law arises in this appeal and accordingly it is dismissed.

JUDGE