

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

CIVIL APPLICATION NO.10/2018 IN
SECOND APPEAL STAMP NO22674/2017

Shaikh Ekram Ekbal and Ors. .vs. Arun Tukaram Dahake and Ors.

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

Court's or Judge's orders.

Mr. P. V. Ghare, Advocate for applicants.

Mr. S. A. Marathe, Advocate for non applicants.

CORAM : V. M. DESHPANDE, J.

DATED : JULY 4, 2019

This is an application for condonation of delay in preferring the second appeal. According to the applicants, there is a delay of 86 days.

Original plaintiff-Arun Dahake filed a suit for specific performance of contract and permanent injunction against six defendants. According to the plaintiff, agreed consideration was Rs.82,00,000/- and out of that Rs.41,00,000/- was already paid to the defendants and though he was ready to perform his part of contract, the sale deed was not executed. Special Civil Suit No.370/2008 was partly decreed by the learned Civil Judge Senior Division, Nagpur whereby the plaintiff was directed to deposit remaining amount of Rs.41,00,000/- within one month from the order.

The applicants/original defendants and remaining defendants did not challenge the said judgment and decree. The said was challenged by the plaintiff himself

since he was aggrieved by some findings. Regular Civil Appeal No.178/2016 filed by original plaintiff is allowed and the decree was modified as mentioned in the order.

According to the application and the submissions made by Mr. Ghare, learned counsel for the applicants, applicant no.4- Ershad Begum Ekbal Sheikh was required to stay at Raipur in view of death of one Habibulla, husband of her sister-in-law Sultana Begum on 17.06.2017. It is the averment in the application and also during the course of the statement, it was stated that after Ershad Begum returned from Raipur, she contacted counsel and inquired about the steps which are to be taken in litigation against Arun Dahake and is the main reason put forth by the applicants for condonation of delay, since according to them, for this reason the appeal could not be filed within limitation.

It is to be observed here that the application is totally vague in respect of the time of Ershad Begum to stay at Raipur. The application is also silent when she came back to Nagpur and when she contacted the counsel. Applicant nos. 1 to 3 are the male members and cause title shows their occupation as business. It is really hard to believe that the male members were not knowing anything about the litigation and applicant no.4, a lady who signs in Urdu, as it could be seen from the affidavit, was alone knowing the progress or otherwise of the case.

In view of the aforesaid, though it is the approach of this Court to take a liberal view in considering the application for condonation of delay, I am refraining myself,

for two reasons; (i) that the applicant has not made out any case for condonation of delay and (ii) the original decree was never challenged by the defendants.

Hence, the application is rejected. Consequently, the second appeal is also dismissed. No order as to costs.

JUDGE

kahale