

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

Civil Application (CAS) No.197 of 2019
in
Second Appeal St. No.24949 of 2018
(Pandurang Malhari Gadkari .vs. Vishwanath Malhari Gadkari and
another)

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

Court's or Judge's orders.

Mr. S.K. Bhojar, Advocate for Appellant.
Mr. P.S. Kadam, Advocate for Respondent No.1.

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

In this application for condonation of delay, notice was issued on 28.02.2019 and the respondents were served. The contesting respondent no.1 has appeared through counsel. Although, no reply to this application is filed, the learned counsel for respondent no.1 has opposed condonation of delay and it is stated that sufficient cause for condonation of delay is not made out.

2. The delay in the present case is 1081 days. There is no dispute about the fact that the applicant/appellant and respondent no.1 are brothers. The respondent no.1 (original plaintiff) had filed suit for declaration and permanent injunction against the appellant (original defendant no.1), which was in the first instance dismissed by the trial Court, but by the impugned judgment and order, the appellate Court reversed the findings of the trial court and granted decree in favour of the respondent no.1, thereby

holding that he had ½ share in the suit property.

3. The impugned judgment and order was passed by the appellate Court on 10.08.2015 and it is the case of the appellant that being real brothers, despite the said decree granted by the appellate Court, the parties had agreed to continue in the same position as was existing prior to passing of the decree.

4. It is then stated that when the respondent no.1 in the month of August, 2018 suddenly approached the respondent no.2 Gram Panchayat for mutating his name in the record of the Gram Panchayat that the applicant/appellant was prompted to approach this Court to challenge the impugned judgment and order passed by the appellate Court.

5. In the facts and circumstances of the present case, the explanation given on behalf of the applicant/appellant appears to be reasonable, particularly in the backdrop of the relationship between the parties. Hence, this Court is of the opinion that although the delay appears to be huge, it deserves to be condoned in the interest of justice.

6. Accordingly, the application is allowed and the delay is condoned.

S.A. St.No. 24949 of 2018

Heard learned counsel for the appellant.

2. Issue notice for final disposal, on the following substantial questions of law:-

- (i) Whether the appellate Court was justified in reversing the findings rendered by the trial Court and holding that the respondent no.1

(original plaintiff) had half share in the suit property?

- (ii) Whether in the light of the oral and documentary evidence placed on record, the findings rendered by the Appellate Court in favour of the respondent no.1 are perverse?

3. The notice shall be returnable in six weeks.
4. Call for R. & P.
5. Mr. P.S. Kadam, Advocate waives notice for respondent no.1.

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Issue notice, returnable in six weeks.

2. In the meanwhile, the parties shall maintain status quo as regards possession of the suit property.

JUDGE