

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

CIVIL APPLICATION (CAS) NO.1266 OF 2018
IN
SECOND APPEAL STAMP NO.25530 OF 2017

(Dada Mahadeorao Bhute (dead) thr. LRs. Anant Dada Bhute and others Vs. Seth Mathuradas Mohata)

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

Court's or Judge's orders.

Shri Abdul Subhan, Advocate for Appellant.

CORAM: ROHIT B. DEO, J.
DATE: 22nd MARCH, 2019.

This application is taken out for condonation of delay of 4734 days in preferring the second appeal.

2] Shri Abdul Subhan, the learned counsel for the appellant seeks adjournment on the ground that the learned counsel Shri Anand Deshpande is to argue the application.

3] Having gone through the averments in the application, this Court is not inclined to consider the request for adjournment.

4] The applicants are the legal heirs of original defendant Dada Bhute. Concededly, Dada Bhute died on 16.02.2005. The judgment and decree which is impugned was passed on 07.09.2004. It is clear that Dada Bhute, during his life time, did not challenge the judgment and decree within the period of limitation.

5] In paragraph 3 a statement is made that the applicants became aware of the litigation when they

received notice from the Executing Court. Be it noted, that even according to the applicants they received the notice of the Executing Court on 03.09.2011. This application is filed on 21.11.2017 i.e. after six years of the knowledge of the judgment and decree.

6] There is absolutely no justification for the delay of more 4734 days in preferring the second appeal. Even if the averments in the application are accepted in toto, even according to the applicants they came to know of the judgment and decree on 03.09.2011. The applicants have not even bothered to explain why after coming to know of the judgment and decree in 2011 they waited till November, 2017 to prefer the appeal.

7] The application is frivolous and is dismissed with costs of Rs.3000/-.

JUDGE