

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.
SECOND APPEAL NO.277/2019

Rambhau Masaji Naitam and anr.vs.Sau.Nirmala Bhaskar Bhandekar & Ors.

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

Court's or Judge's orders.

Mr. V. N. Morande, Advocate for appellants.

Mr. P. D. Sharma, Advocate for respondents.

CORAM : V. M. DESHPANDE, J.

DATED : AUGUST 14, 2019

Heard Mr. Morande, learned counsel for appellants and Mr. Sharma, learned counsel for respondents.

Present appeal is filed by original defendant nos. 1 and 2. The challenge, that is set up in this second appeal, is to an order passed by learned Principal District Judge, Gadchiroli dated 16.08.2018 in Misc. Civil Application No. 30/2017, whereby learned Principal District Judge rejected application under Section 5 of the Limitation Act for condonation of delay in preferring appeal before said Court.

One Masa Naitam was having two sons and three daughters. Appellants are his sons whereas respondents are his daughters.

Respondent nos.1 and 2 herein filed a suit for partition and possession against the present appellants and respondent no.3. The said suit was registered as Regular Civil Suit No.69/2013. Suit was contested by filing written statement. Learned Jt.Civil Judge Junior Division, Gadchiroli found that parties to the suit are having 1/5th share each and accordingly, a decree was passed on 12.02.2016.

Said judgment and decree was taken up before the appellate Court by filing the appeal by present appellants on 10.11.2017 since the appeal was barred by limitation and delay of 1 year 7 months 8 days has caused, the appellants herein filed application for condonation of delay along with memo of appeal filed under Section 96 of the Code of Civil Procedure. Application for condonation of delay was separately registered as Miscellaneous Civil Application No. 30/2017.

The application for condonation of delay is also placed before this Court and it is at page no.9 to 11 of the compilation of the present appeal. Paragraph 2 of the said application is the only explanation offered by present appellants for condonation of delay. Paragraph 2 of the said application is reproduced hereunder:

“2. That the appellant was being aggrieved by the judgment and decree wants to file appeal, but unfortunately the appellants is illiterate and old person, they have no legal knowledge. In this matter the previous advocate for appellant/defendant not to informed the appellant properly at the time of original suit so learned lower court passed the order against appeal without evidence and without cross and not about the final judgment, therefore he could not file appeal within prescribed limitation.”

The learned Principal District Judge, after hearing the parties, rejected the application.

Though, it is open for the Courts to condone the delay, for that the litigant who did not approach the Court of law within stipulated period has to give explanation. Paragraph 2, which is reproduced hereinabove, in my view, does not give any cogent explanation, which in my view, was rightly considered by the Court below.

Consequently, no substantial question of law is involved in the present appeal. The appeal is therefore rejected. No order as to costs.

JUDGE

kahale