

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

CIVIL APPLICATION (CAS) 1516 OF 2017

IN

SECOND APPEAL STAMP 26157 OF 17

(Madan s/o Vitthalrao Firangi..vs..Kisan s/o. Sagoji Talekar & ors)

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

Court's or Judge's orders.

Mr. Deoul Pathak, counsel for applicant.
Mrs. Vijaya Thakre, counsel for respondents 1(i) to 1(v).

CORAM: ROHIT B. DEO, J.

DATE: 2nd APRIL, 2019.

This application is taken out by the original plaintiff seeking condonation of delay of 255 days in preferring the Second Appeal.

2 It is vaguely averred in the application that due to ill health, the appellant could not take steps to prefer the appeal.

3 No particulars of the accident or the secondary infections or complications which are pleaded in paragraph 11, are disclosed. No documentary material is placed on record to substantiate the contention. The delay is not satisfactorily explained.

4 However, only in order to satisfy the conscious of the Court, this Court endeavoured to look into the merits of the proposed appeal to assess whether there is a prima facie arguable case and having done so, this Court is satisfied that the record

does not disclose even a prima facie case.

5 The first appellate Court has recorded a finding of fact that the suit property was not the ancestral property and was the self acquired property of the father of the plaintiff. It is further held that the suit challenging the sale deed executed in the year 1972 is filed in the year 1983 and is barred by limitation. These findings of fact appear to be consistent with the material on record. That apart, the first appellate Court has also considered the case of the plaintiff that the suit property was sold in the absence of legal necessity. The first appellate Court having recorded a finding that the suit property was the self acquired property of Vitthalrao, there was no occasion to consider the aspect of legal necessity. Be that as it may, even the said finding appears to be unexceptionable on facts.

6 In this view of the matter, this Court does not find that case for condonation of delay is made out.

7 The Civil Application is dismissed. Needless to say the interim order dated 18.12.2017 stands vacated.

JUDGE