

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

CIVIL APPLICATION (CAS) NO.529 OF 2019

IN

SECOND APPEAL STAMP NO.5970 OF 2019

Sher Mohammad s/o Pyar Mohammad (Dead) through LR's Mohammad Jahir Saudagar and
others.

Vs.

Vilas s/o Keshavrao Nakade.

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

Court's or Judge's orders

Shri M. P. Khajanchi, Advocate for appellants.

Ms. Monika Dodani, Advocate h/f Shri Rohit Joshi, Advocate for
respondent.

CORAM : AVINASH G. GHAROTE, J.

DATE : JANUARY 21, 2020.

Heard Shri Khajanchi, learned counsel for the appellants and Ms. Monika Dodani, learned counsel for the respondent. By the present application, the delay of 379 days, occasioned in the filing of the second appeal is being sought to be condoned on the ground that the appellant no.2, who was looking after the matter, was suffering from ailment for which he was bed-bound, in support of which a medical certificate dated 20.02.2019 has been placed on record.

The learned counsel for the respondent however opposes the application and contends that the reasons given are in-correct in as much as the appellant no.2, never appeared before the First Appellate Court. The suit before the Trial Court as filed by the respondent was for injunction to the effect that the original defendants / appellants be permanently

restrained from disturbing the plaintiff's possession over the suit land, which came to be dismissed by the Trial Court, which decree has been upset, by the Appellate Court thereby granting a decree for permanent injunction.

In these circumstances, it is necessary that the matter be heard on merits. Therefore for the reasons given in the application and in spite of objection by the learned counsel for the respondent, the delay is condoned. Office is directed to register the appeal and list for admission.

Learned counsel Ms. Monika Dodani for the respondent states that she has instructions to waive service on merits.

The counsel for appellants is directed to file the paper book of the First Appellate Court along with the documents as exhibited before the Trial Court within a period of two weeks. Learned counsel for the parties are put on notice that the matter may be decided finally at the stage of admission. Civil Application is disposed of.

JUDGE