

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

CIVIL APPLICATION (CAO) NO.487/2021
IN
MISC CIVIL APPLICATION ST. NO.8444/2021
IN
SECOND APPEAL ST. NO.2789/2020

Shri Jeetendra s/o Punjaramji Bhagat,

-VS-

Shri Prabhakar s/o Vitthalrao Pandao.

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

Court's or Judge's Orders

Shri A.V. Bhide, Advocate for appellant.

CORAM : S.M. MODAK, J.

DATE : AUGUST 23, 2021.

Heard Shri Bhide, learned Advocate for the appellant. The original defendant wants to challenge the judgment dated 21/11/2018 by which the defendant was directed to execute sale-deed. There was an appeal in filing second appeal. The appellant filed an application for condonation of delay vide Stamp No.279/2021.

2. The office has taken certain office objections and amongst of that one is not filed the application for condonation of delay. The learned Registrar (Judicial) inadvertently directed the appellant to file an application for condonation of delay failing which the registration stands refused.

3. In fact, neither the office nor the then learned Advocate representing the appeal has pointed out to the office about filing of delay condonation application. Result is refusal of registration.

4. Under these circumstances, the Court has to restore the matter. There is delay of 173 days in filing restoration application for restoring the delay condonation application. Reasons are convincing, hence the following order:

- a) The delay of 173 days caused in filing restoration application is condoned;
- b) The original proceedings i.e. Stamp No.2789/2020 is restored;
- c) The appellant to remove remaining office objections within a period of two weeks;
- d) The appellant is permitted to add the number of days delay in the said application (which is kept blank).

CIVIL APPLICATION (CAS) ST. NO.2791/2020

Heard Shri Bhide, learned Advocate for the defendant. The First Appellate Court has reversed the decree of refund of earnest money and instead decreed the suit by granting specific performance. The said decree is against present appellant/defendant. It is submitted that the execution proceedings are filed. According to him, this is not a case wherein the agreement for sale is signed on behalf of the minor defendant but it is a case where minor himself has signed. The agreement was signed on 06/10/2006. The date of birth of defendant is 12/01/1989 (as per the birth certificate of Gram Panchayat at Exhibit-84).

2. The Trial Court has believed this certificate and dismissed the suit. At the same time, the Trial Court has not believed the bonafide certificate at Exhibit-50 issued by School. The date of birth is shown as 12/01/1988.

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3. Whereas the First Appellate Court has believed the bonafide certificate and not believed the birth certificate. One more issue is also raised about not stamping the agreement for sale fully in view of the fact that possession was handed over. Though it is not clear in the appeal memo. The appellant seeks liberty to amend the appeal memo. Permission is granted.

4. In view of above submission, this Court feels that if decree executed, the appeal will become infructuous. In view of that, stay is granted to the execution of decree till appearance of the respondent.

5. The matter be placed after removal of the office objections after two weeks.

JUDGE

R.S. Sahare