

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

CIVIL APPLICATION (CAS) NO. 148 OF 2020
IN
SECOND APPEAL STAMP NO. 716 OF 2020

Munindrakumar s/o Namdeo Vaidya & -- Applicants
Others

Vs.

Gaurav S/o Naresh Shivhare and others -- Respondents /
Non-applicants

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

Court's or Judge's orders

Mr. M.P. Khajanchi, Advocate for Applicants
Mr. Kaustubh Deogade & Mr. Virat Sharma, Advocate for
Respondent No.1

CORAM : MANISH PITALE, J.

DATE : 13th APRIL, 2022

By this application, the applicants are seeking condonation of delay of 1015 days in filing the accompanying second appeal. Notice was issued in this application, wherein the respondents have been served and the contesting respondent is represented through counsel.

2. Mr. Khajanchi, learned counsel appearing for the applicants submits that a perusal of the contents of the application and the documents filed therewith would show that sufficient grounds have been made out on behalf of the applicants for condonation of delay in filing the second appeal. It is submitted that although the judgment and decree of the Appellate Court was passed on 31/03/2017, the second appeal could be filed only after delay of 1015 days, for the reason that the original defendant No.2 i.e. applicant No.2 in the present applicant, represented through his legal heirs, was looking after the litigation throughout the proceedings before the Trial Court as well as the Appellate Court. It was submitted that he was diagnosed with cancer and he was undergoing treatment. Eventually, he succumbed to the said disease on 15/09/2019. It is then contended that when the family sat together, the widow of the applicant No.2 informed the family members about the impugned judgment and decree passed by the Appellate Court, pursuant to which steps were taken by the applicants to apply for a certified copy, which was received on 26/11/2019 and eventually, the accompanying second appeal came to be filed. Attention of this Court was invited to the documents regarding treatment of now deceased applicant No.2 for cancer and his eventual death

on 15/09/2019. On this basis, it was submitted that delay deserved to be condoned.

3. Mr. Deogade, learned counsel appearing for respondent No.1 referred to the reply filed on behalf of the said respondents opposing the present application. It was submitted that even though it was claimed that the original defendant No.2 was looking after the litigation, it was suppressed from this Court that there was a general power of attorney executed by the said defendant and original defendant i.e. applicant No.1 herein, in favour of the son of the applicant No.1. It was submitted that when there was a power of attorney holder, who was given the authority to take necessary steps with regard to the said property, it could not lie in the mouth of the applicants that delay occurred due to ill-health and eventual death of the original defendant No.2. On this ground, the learned counsel submitted that the application deserved to be dismissed.

4. Heard learned counsel for rival parties and perused the material on record. Since the respondent No.1 has strongly relied upon the general power of attorney and an allegation of suppression is made against the applicants, it would be appropriate that this Court refers to the said

document first. A perusal of the same would show that the applicants had indeed executed a general power of attorney on 21/02/2014, in respect of the suit property. But, in the said document, there is no reference to the litigation pending between the parties. At the time when the said document was executed the suit filed by respondent No.1 was pending before the Trial Court. There was no reference to the same. A perusal of the judgment and order dated 26/02/2016, passed by the Trial Court in the present case would show that it was the original defendant No.2 i.e. the now deceased applicant No.2, who had examined himself on behalf of the defendants, thereby supporting the submissions made on behalf of the applicants that it was the said defendant, who was incharge of the litigation in the present case. Therefore, reliance placed on the aforesaid general power of attorney on the part of the respondent No.1 while opposing the present application appears to be misplaced.

5. This Court has perused the contents of the application seeking condonation of delay and the voluminous documents filed therewith, pertaining to the medical treatment given to the applicant No.2, which show that the applicant was suffering from cancer and he eventually expired on 15/09/2019. The explanation given

in the application that it was on the demise of applicant No.2 that the family members became aware of the judgment and decree passed by the Appellate Court appears to be believable, particularly because steps were immediately taken on behalf of the applicants by obtaining a certified copy in November 2019 and filing the accompanying second appeal. There is also nothing to show that after the judgment and decree dated 31/03/2017, was passed by the Appellate Court, steps were taken on behalf of the respondent No.1 / decree holder to get the decree executed.

6. In view of the above, this Court is convinced that the applicants have made out sufficient cause for condonation of delay. Although the delay is of 1015 days, merely because the length of the delay is considerable, it ought not to be held against the applicants, particularly, when this Court has reached the conclusion that sufficient cause is indeed demonstrated on their behalf while seeking condonation of delay.

7. Accordingly, the application is allowed. Delay is condoned.

8. Registry is directed to register the second appeal.

9. The second appeal shall be listed for consideration after four weeks.

JUDGE