

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

Civil Application [CAS] No.114 of 2021
in
Second Appeal St.No.2723 of 2020

Smt. Dewangana w/o Bhaurao Samusakade & others

vs.

Shri Mahadeo Shivram Samusakade & others

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

Court's or Judge's Orders

Mr. V.S. Lokhande, Advocate for the Applicants/Appellants.
Mr. C.N. Funde, Advocate for the Non-Applicants/Respondents.

CORAM : NTIN W. SAMBRE, J.

DATE : 30th AUGUST, 2022.

This application is preferred by the original plaintiffs, who are the appellants in the second appeal.

02] The prayer in the application is for condonation of delay, wherein the delay of 702 days is sought to be condoned. The contentions of learned Counsel Mr. Lokhande for the applicants are, the delay is unintentional and *bona fide*, as applicant No.1, who was labour, was not in a financial condition to prefer the appeal. It is further claimed that applicant No.1 was suffering from medical ailments, as could be inferred from the Medical Certificate issued by Dr. Ganesh Penkar on 06/01/2020. According to the learned Counsel for the applicants, the Doctor has already certified that applicant No.1 was suffering from ailments for a period from 30/01/2018 to 25/11/2019. He would then invite attention of this Court to the death of Sumitra Keshav Meshram, i.e. original plaintiff No.1. According to him, the appellants were under trauma and as such the appeal could not be preferred within time.

03] His further contentions are, substantial time was required to arrange the finance and process a prayer for issuance of certified copy. In the aforesaid background, his contention is, the delay be condoned in the interest of justice.

04] The prayer is opposed by the non-applicants/respondents.

05] The applicants appear to have initiated R.C.S. No.32/2008 for declaration and injunction, which appears to have been dismissed on 21/08/2010. The appeal being R.C.A No.139/2010 appears to be partly allowed on 04/12/2017. As such, the appeal ought to have been filed within a period of 90 days as prescribed under Section 100 of the Code of Civil Procedure, and it should have been brought before this Court on or before 31st of March, 2018.

06] The present application is taken on by the applicant on board on 04/02/2020 i.e. almost after a period of 700 days. The delay is sought to be condoned on the ground of ill-health and financial constraints.

07] As far as the issue of ill-health of applicant No.1 is concerned, the fact remains that applicant No.2 was very much available to pursue the appeal. Apart from above, but for the ill-health of applicant No.1, no convincing explanations are placed on record. After the judgment was delivered on 04/12/2017 by the appellate Court, it is seen that the copy was applied on 04/10/2019, which was delivered on 19/10/2019. As such, the applicants are unable to give explanation for the period from 04/12/2017 to 13/10/2019. Apart from above, from 19/10/2019 till 04/02/2020 also, no explanation is

coming forth. As such, there is hardly any *bona fide* cause cited in the application forming an opinion that the delay caused is unintentional and *bona fide*.

08] That being so, no case for condonation of delay is made out. The application, as such, stands rejected. As a sequel of above, the appeal also stands dismissed.

JUDGE

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