

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

CIVIL APPLICATION (CAS) NO. 193/2021 IN
SECOND APPEAL STAMP NO. 10360/2020

Smt. Sitabai Wd/o Jyotiram Motiram Shende (Dead) through L.Rs. Sudhakar S/o
Jyotiram Shende and others

Vs.

Nagpur Improvement Trust, through its Divisional Officer, South Zone, Nagpur

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

Court's or Judge's orders

Shri D.C. Chahande, Advocate for appellants
Shri S.M. Puranik, Advocate for respondent

CORAM : SMT. M.S. JAWALKAR, J.

DATE : 22/08/2022

The present application is filed by the appellants
- applicants for condonation of delay in filing second
appeal. The judgment and decree came to be passed on
29/06/2012, by the Appellate Court in Regular Civil
Appeal No. 160/2010, thereby dismissing appeal.

2. The suit was for permanent injunction which
was dismissed and as stated above appeal challenging the
same judgment and decree is also dismissed. The reason
for delay is stated that after passing of the judgment by
Appellate Court, the neighbourers were started
encroaching the suit plot. Therefore, they approached to
the Recovery Officer of the defendant - N.I.T. vide order
dated 06/10/2015.

3. The appellants were directed to approach to the Nagpur Municipal Corporation, as area in question comes under the control of Nagpur Municipal Corporation. Therefore, he moved the application to Nagpur Corporation. It is his contention that Nagpur Municipal Corporation was refused to take any action as the alleged encroachment is on the private property. Thus, it is his contention that neither N.I.T. nor Corporation has taken any steps and the original plaintiff died on 24/12/2016. The applicants are the only legal heirs of deceased Sitabai. They are successor to inherit her property. Due to the dismissal of appeal, the judgment is coming in the way of their rights. In view thereof, they filed this second appeal challenging the order and decree dated 29/06/2012.

4. The application is vehemently opposed by the Counsel for the respondent. After going through the contents, I am satisfied that there is no justifiable and bonafide reasons to condone the delay.

5. Both the Courts below held against the appellants/applicants and since 2012, the applicants have not taken any steps till 16/10/2020. Only reason given is that they were applying to the N.I.T. and Nagpur Municipal Corporation for removal of encroachment.

6. The huge delay of around eight years cannot be condoned, only on this ground that he was approaching to the authorities. The original plaintiffs were not restrained by anybody to take necessary steps available as per provisions of law. As the reasons given by the appellants were not justifiable and satisfactory. The application is liable to be rejected. As such, application for condonation of delay is hereby rejected.

(SMT. M.S. JAWALKAR, J.)

Jayashree..