

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

CIVIL APPLICATION (CAS) NO. 856 OF 2022
IN
SECOND APPEAL (ST.) NO. 10243 OF 2022

AARTI D/O. NARAYANRAO AHIRRAO AND ANR.

...VERSUS...

M/S. VED BUILDCON, A PARTNERSHIP FIRM, NAGPUR THR. ITS PARTNERS AND ORS.

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

Court's or Judge's order

Shri S.V.Deshmukh, Advocate for appellants/applicants.
Shri R.R.Srivastava, Advocate for respondent nos. 1 and 2.

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

DATE : 03rd AUGUST, 2023

The present application is filed for condonation of delay in filing Second Appeal. There is delay of 30 days.

2. It is contention of the learned counsel for the applicants that the order came to be passed by learned First Appellate Court on 16/02/2021, however, due to surge of Covid-19 pandemic, he could not file Second Appeal within limitation. He also relied on the judgment passed by the Hon'ble Apex Court in Suo Motu Writ Petition (C) No. 3/2020, wherein the period of limitation was excluded from 15/03/2020 till 28/02/2022. It is directed in the same matter that the above referred period shall stand excluded for the purposes of limitation as may be prescribed under any general or special laws in respect of all judicial or quasi-judicial proceedings. It is further held that consequently, the balance period of limitation remaining as on 03/10/2021, if any, shall become available with

effect from 01/03/2022. As such, learned counsel for the applicants submitted that the period of limitation is start on 01/03/2022 and will expire on 30/05/2022. It is submitted that after surge of Covid-19 went down, the applicant no. 1 approached Advocate Shri Pradeep Agrawal for preparing and filing of Second Appeal. He called to Adv. Shri Agrawal in the first week of February, 2022, however, the said Advocate told him that he has suffered two brain strokes and therefore, he was advised to take rest for some period and requested applicant no. 1 to call him after one month and ultimately, the said Advocate handed over the brief to the applicant and requested the applicant to engage to another counsel. In support of his contention, the applicant has placed on record the medical documents and certificates in respect of ailment of learned Advocate Shri Pradeep Agrawal. For the above referred reasons, he claimed to condone the delay as the delay is neither intentional nor deliberate.

3. As against this, learned counsel for the respondents vehemently opposed the application and submitted that in Covid-19 pandemic period itself, the Writ Petition came to be filed by the applicants through one Advocate Shri Kailash Rawandhe, however, the same was withdrawn with liberty to file Second Appeal. As such, the reasons put forth are not genuine or bonafide.

4. I have seen the order in Writ Petition No. 1660/2021. Learned Advocate attended the said matter through video conferencing. However, learned counsel for the respondents submits that it is nothing but delaying tactics. However, I am not agree with the contention of the learned counsel for the respondents as even if

the applicants have engaged the counsel for filing Writ Petition, they might not be satisfied with the performance or for any other reasons, they want to engage Adv. Shri Agrawal to conduct Second Appeal.

5. The documents placed on record in respect of ailment of Advocate Shri Agrawal appears to be genuine, which includes Certificates, Discharge Card and other documents pertaining to ailment of Advocate Agrawal. As such, I am inclined to allow the application and condone the delay of 30 days in view of the order passed by the Hon'ble Apex Court in Suo Moto W.P. 03/2020. Accordingly, I proceed to pass the following order:-

ORDER

- 1) Application is allowed.
- 2) Delay in filing Second Appeal is hereby condoned.
- 3) Registry is directed to register Second Appeal.
- 4) The application stands disposed of.

(Smt. M.S. Jawalkar, J.)

B.T.Khapekar