

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

CIVIL APPLICATION (CAS) NO.07/2020
IN
SECOND APPEAL ST. NO.23049/2018

Sau. Haribai w/o Shantilal Ubale

Vs.

Mayabai s/o Mansaramji Shamkuwar and another

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

Court's or Judge's orders

Shri P.D. Ganvir, Advocate for appellant
Shri N.B. Bargat, Advocate for respondent Nos. 1 and 2

CORAM : SMT. M.S. JAWALKAR, J.
DATED : 27/04/2023

The present application is filed for condonation of delay of 587 days in filing second appeal. The impugned order came to be passed on 25/11/2016. The reason putforth by the applicant is that his brother used to attend office of Counsel however, he could not attend in the year 2017 and appellant was also unaware of passing of the order in Regular First Appeal No.135/2012. It is further contention that he received notice through Advocate Shri Jitendra D. Dhote dated 09/03/2018, directing the appellant to vacate suit premises wherein it was mentioned that the Regular Civil Appeal No.135/2012 was decided on 25/06/2016 and it was dismissed. After knowing this fact, he preferred Second Appeal and there is delay of 587 days.

2. The learned Counsel for respondents vehemently opposed the application on the ground

that there is no proper explanation for a period of near about 2 years.

3. On perusal of application, it reveals that though it is mentioned that brother of appellant has not visited the office of Advocate during 2017. However, there is no reason given, what circumstances precluded him to attend his matter in the office of Advocate. Even if, it is presumed that after receipt of notice dated 09/03/2018, applicant got knowledge about dismissal of appeal for about 5 months, applicant has not taken any steps to file Second Appeal and the Second Appeal is filed on 01/08/2018. As such, there is no satisfactory explanation for delay in filing Second Appeal. The appellant is in possession of suit property. In spite of concurrent finding by both the Courts below. As such, there was no bonafide and justifiable reason for not filing appeal within time. Hence, the application stands dismissed.

JUDGE

R.S. Sahare