



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

CIVIL APPLICATION (CAS) NO. 1616 OF 2023
IN
SECOND APPEAL (ST.) NO. 23035 OF 2023

WASUDEO MAHADEORAO VARHARE

...VERSUS...

SHIVOM GOVINDLAL KEDIYA (DEAD) THR. LRS. 1(A) LATA WD/O. SHIVOM KEDIYA 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 M.V.Rai, Advocate for applicant/appellant.

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

DATE : 19th DECEMBER, 2023

Heard.

2. The present application is filed for condonation of delay in filing Second Appeal.

3. For the reasons stated in para 2 of the application, I am satisfied that there is no intentional or deliberate delay in filing Second Appeal. However, as no due diligence is shown, the application is allowed, subject to costs.

4. Delay in filing Second Appeal is hereby condoned, subject to costs of Rs. 500/- to be paid to the High Court Bar Association, Nagpur, within a period of two weeks.

5. Registry is directed to register the Second Appeal.

6. Accordingly, the application stands disposed of.

SECOND APPEAL (ST.) NO. 23035 OF 2023

After registration of Second Appeal, issue notice to the respondent(s), returnable within three weeks, on the following substantial questions of law:-

“(A) Whether the learned Appellate Court had committed error in considering the fact that, the burden was upon the plaintiff to prove that there was an agreement for sale and the amount of Rs. 5 lakh was paid towards the consideration of land, and the suit was filed for the recovery of Rs. 5 lakh, and whether he had discharged his burden, and thus the onus was on the plaintiff to prove the said fact, and whether the evidence was sufficient to prove the said fact so as to shift the onus ?

(B) Whether the learned Appellate Court had appreciated Section 101 of the Evidence Act in proper perspective as the burden was upon the plaintiff to prove that, there was an agreement for sale and the amount was paid towards the price of land, and whether the said burden was discharged by the plaintiff in the garb on evidence of record ?”

CIVIL APPLICATION (CAS) NO. 1617 OF 2023

Issue notice to the respondent(s), returnable within three weeks.

2. In the meanwhile, there shall be stay to the effect, execution and operation of the judgment and order dated 12/04/2023 passed by the learned District Judge-1, Wardha in RCA No. 44/2017, subject to deposit of Rs. 1,25,000/- (Rupees One Lakh Twenty Five Thousand Only) with this Court, within a period of three weeks.

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