



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

CIVIL APPLICATION NO.279/2021 IN SECOND APPEAL ST. NO. 3958/2021

Godabai Deorao Gate and ors. Vs. Mohammad Isaraul Haque and Ors.

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

Court's or Judge's orders

Mr. J. J. Chandurkar, Advocate for applicants.

Mr. F. T. Mirza, Advocate for non applicants.

CORAM : ANIL L. PANSARE, J.

DATE : 01.04.2024

Heard.

The applicants-appellants have filed present application under Section 5 of the Limitation Act, 1963, for condonation of delay of 1010 days in filing appeal against judgment and decree dated 01.01.2018 passed by learned District Judge 8, Nagpur in Regular Civil Appeal No. 582/2015.

Having heard both sides, it appears that the applicants were original defendants. The Trial Court dismissed the suit filed by the non applicants – respondents seeking specific performance of contract. The First Appellate Court, however, reversed the finding of the Trial Court and decreed the suit. The applicants did not appear before the First Appellate Court.

The non applicants have, subsequent to the judgment and decree passed by the First Appellate Court, filed execution proceeding bearing Special Darkhast No.124/2018 before the 2nd Jt. Civil Judge Junior Division, Nagpur. Applicant no.1 – Godabai, was served with the notice of

execution proceeding on 02.08.2018. The other applicants refused to accept the notice. Bailiff's report to that effect has been filed on record. Three notices were served in the month of August, 2018. The applicants were, thus, aware of the passing of the impugned judgment in August, 2018. Despite, they did not file second appeal. They have approached this Court after 1010 days. In the meantime, the decree came to be executed through Court.

The applicants have taken a plea that they were not aware of the passing of the impugned judgment and came to know about the same when they approached the revenue authority for obtaining 7/12 extract. The counsel for the non applicants submits that even in the revenue proceedings, notices were served upon the applicants.

I need not go into details of the revenue proceedings. The record clearly show that the execution proceedings were served upon the applicants in August, 2018. There is no explanation as to what prevented the applicants from approaching this Court immediately after August, 2018. In that sense, the applicants failed to show any cause, muchless sufficient cause, to approach the Court belatedly. There is no substance in the application. The application is rejected.

(Anil L. Pansare, J.)