



201-2021

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

CIVIL APPLICATION (S) NO. 201 OF 2021
IN SECOND APPEAL ST. NO. 25159 OF 2019

(Sau. Shantabai w/o Premlal Lachure & Anr. Vs. Gopal Gyasilal Gupta (dead) through his
legal representatives & Anr.)

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

Court's or Judge's orders.

Shri J.B. Kasat, Counsel for the applicants/appellants.
Shri V.S. Giramkar, Counsel for the respondents.

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CORAM : ANIL L. PANSARE, J.
FEBRUARY 5, 2024.

By the present application, the applicants are seeking to condone delay of 160 days in filing Second Appeal on the ground of approaching wrong forum.

2] It appears that the applicants approached this Court in Writ Petition No. 7718/2019. Vide order dated 2/12/2019, this Court has granted permission to the applicants to withdraw the petition with liberty to file appeal under Section 100 of the Code of Civil Procedure, 1908 (for short "the Code"). Accordingly, the application seeking condonation of delay in filing appeal under Section 100 of the Code has been filed on 9/12/2019, i.e., within a week of passing order by this Court.

3] In view of above, the application seeking to condone delay is allowed. Second Appeal be registered.

4] The Civil Application is disposed of.

SECOND APPEAL ST. NO. 25159/2019

5] Heard.

6] The appellants has challenged the judgment and order dated 2/4/2019 passed below Exh.1 by District Judge – 3, Amravati in Misc. Civil Application No. 214/2018. By the said application, the appellants intended to condone delay of 75 days in challenging the judgment and order dated 3/5/2018 passed by 2nd Joint Civil Judge Senior Division, Amravati in R.C.S. No. 117/2013. The appellants herein were the original defendants and the respondents were the original plaintiffs. The trial Court has vide order dated 3/5/2018 decreed the suit thereby cancelling the sale deed executed between defendant nos. 1 and 2.

7] The learned Counsel for the plaintiffs states that the plaintiffs came-up with a case that defendant no.1 is their sister and could not have sold the entire property to defendant no.2 which is jointly owned by the plaintiffs and defendant no.1.

8] As could be seen, the trial Court has passed the judgment and decree on 3/5/2018. The First Appeal has been filed on 14/9/2018. The appeal ought to have been filed on or before 2/6/2018. Thus, by arithmetic calculations, there occurred delay of 104 days in filing the appeal. However, the appellants herein, who were the applicants before the First Appellate Court, have sought to condone delay of 75 days. Thus, even if the request is to be allowed, the entire delay will not be condoned. That apart, the ground put forth by the appellants is that after

passing decree, the respondents/non-applicants approached the Registrar, Amravati City as also Police Station – Kolhapuri Gate and appellant no.2 on 3/9/2018 came to know about passing of the order by the trial Court. There is absolutely no reason given by the appellants as to how is the non-applicants approaching the office of the Registrar or Police Station relevant for appellant no.2 to acquire knowledge of order passed by the trial Court.

9] Thus, there are two reasons why there is no merit in the application. Firstly, the appellants have not shown sufficient cause to condone the delay and secondly even if delay as prayed for is condoned, the appeal cannot be registered for the reason that the appellants have sought to condone delay of 75 days while admittedly the delay is of 104 days.

10] Thus, there is no substance in the appeal. The same is dismissed.

(ANIL L. PANSARE, J.)

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