



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

CIVIL APPLICATION (CAS) NO. 299 OF 2022
IN
SECOND APPEAL (ST) NO. 27349 OF 2017

Keshao s/o. Jago Thool & anr **Vs.** Siddharth s/o. Hiranman Ratnaparkhi & anr.

Office Notes, Office Memoranda of
Coram, appearances, Court's Orders
or directions and Registrar's order

Court's or Judge's Order

Mr. D. N. Dani, Advocate for appellants.

Mr. M. R. Radke, Advocate a/w. Mr. S. V. Sohoni, Advocate, for
respondent No. 1 and 2

Mr. D. T. Shinde, Advocate for respondent no. 3

CORAM : ROHIT W. JOSHI, J.

DATE : 11.09.2025.

. This is an application for condonation of delay of 811 days caused in filing Second Appeal.

2. The reason for seeking condonation is that the appellants are poor and illiterate persons who are not acquainted with the Court proceedings. It is stated that they were initially not aware about the appellate decree passed on 12.06.2015. The appellants have stated that they had been to the office of their Advocate somewhere around in the month of August/September 2015 and learnt that the appeal was dismissed. The appellants further state that they had approached an Advocate for filing the second appeal, however second appeal could not be filed for want of money to make payment of Court fees.

3. The respondents have strongly opposed the application. The respondents have pointed out that several properties were sold by the appellants between the year 2002 and year the 2010. Index-II with respect to three sale deeds dated 17.09.2002, 09.09.2003 and 22.02.2010 are filed alongwith the reply.

4. Perusal of the said documents indicates that three agricultural lands were sold for consideration of Rs. 2,00,000/-, Rs. 6,00,000/- and Rs. 44,00,000/-.

5. It will be pertinent to state that the Second Appeal arises out of a suit for specific performance of contract. The agreement in question is dated 29.07.2004 and pertains to 0.82 H.R. of land, being a part of Survey No. 111, Village Shankarpur, Tahsil and District Nagpur. The agreement states that, in the event, for any reason sale deed with respect to the said property bearing Survey No. 111 cannot be executed, sale deed with respect to land bearing Survey No. 19, situated in the same village, will be executed. The name of appellant No. 1 is mentioned as vendor in the agreement. However, on the last page of agreement, where the appellant no. 1 has put his signature, it is mentioned that the appellant no. 1 has executed the agreement as duly constituted attorney for the appellant no. 2, respondent no. 3-who are his brothers and mother Savitribai, as well.

6. It will be necessary to state that the respondent no. 3 has filed a suit for partition and separate

possession, being Special Civil Suit No. 435 of 2005. The said suit was decreed on 16.11.2007. In the said decree for partition, the land bearing Survey No. 19 has fallen with the share of the appellant no. 2.

7. The grievance of the appellants is that the property which has fallen with the share of appellant no. 2 is directed to be sold. The learned Advocate for the respondents contends that the appellant no. 2 had executed a Power of Attorney in favour of the appellant no. 1 on 04.06.2001, and therefore, appellant no. 1 was competent and authorized to execute agreement of sale for and on behalf of the appellant no. 2 as well.

8. The appellants have filed affidavit of one Sanjay s/o. Keshao Thool stating that the appellant no. 2 has not received any amount of consideration under the three sale deeds referred in the reply affidavit of the respondents.

9. It must also be stated that, although the appellant no. 1 has signed the agreement stating that he has signed it as a constituted attorney for his brothers (including the appellant no. 2) and mother. It must also be stated that the agreement recites that the appellant no. 1 had stated that his brothers (appellant no. 2 and respondent no. 3) and his mother will personally remain present for execution of the sale deed.

10. Having regard to the aforesaid, in the considered opinion of this Court, it will be expedient in the interest

of justice to grant one opportunity to the appellants to contest the appeal on merits. The fact that the property in question has fallen to the share of appellant no. 2 as per decree for partition dated 16.11.2007 and he is stated to be a specially abled person, is also one of the equitable considerations for condoning the delay.

11. In such circumstances, taking pragmatic view of the matter it will be appropriate in the considered opinion of this Court that the delay caused is condoned. The delay is accordingly condoned.

(ROHIT W. JOSHI, J.)

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