



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

CIVIL APPLICATION (CAS) NO.501/2025
IN
SECOND APPEAL ST. NO.11104/2025

Prabhakar S/o Shrawanji Nikore
...Versus...
Vasanta S/o Maniramji Dhote and others

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

Court's or Judge's orders

Mr. M.R. Johrapurkar, Advocate for applicant
Mr. A.R. Lule & Mr. S.A. Joshi, Advocates for respondent Nos.1
Mr. A.J. Thakkar, Advocate for respondent Nos.4 and 5

CORAM : ROHIT W. JOSHI, J.

DATE : 17/11/2025

1. This is an application seeking leave to file second appeal.
2. The respondent No.1 has filed a suit for possession of the suit property, which is an agricultural land against the respondent Nos.2 to 5, who were the original defendants. The respondent No.1 claimed ownership over the suit property on the basis of Will executed in his favour by his paternal uncle Gulabrao, who is the husband of respondent No.2 and father of respondent Nos.3 to 5. The suit was initially dismissed by the learned trial Court. However, appeal filed by the plaintiff came to be allowed vide judgment and decree dated 21/12/2016. After the appeal was allowed, the respondent Nos.2 and 3 i.e. widow and son of Gulabrao sold the suit property to one Avinash Hatwar vide sale deed dated 22/04/2008. The present appellant has purchased the suit

property from the said Hatwar vide sale-deed dated 21/10/2015. The present application is filed seeking leave to appeal since the present applicant was not a party to the civil suit and appeal.

3. Learned Advocate for the respondent No.1 opposes the application on the ground that the present applicant has purchased the suit property after the respondent No.1 was declared to be absolute owner thereof.

4. Since it is not in dispute that the respondent Nos.2 and 3 had sold the suit property to one Hatwar from whom the applicant has purchased the suit property, in the considered opinion of this Court, application for leave to file appeal must be granted. The applicant/appellant must get chance to assail the decree on the basis of which possession of the suit property is taken from him in the execution proceedings. Civil Application for leave to file appeal is allowed.

CIVIL APPLICATION ST. NO.11107/2025

1. This is an application for condonation delay of 2937 days caused in filing the second appeal.

2. The applicant has stated that he was not aware about the ongoing litigation between the respondent No.1 and respondent Nos.2 to 5. He states that the respondent No.1 has filed a suit for injunction against him being Regular Civil Suit No.61/2022 in which written statement is filed by the applicant on 07/10/2022.

3. Learned Advocate for the applicant states that initially applicant was not aware about the litigation between

the respondent No.1 and respondent Nos.3 to 5. He states that after being served with the summons of the civil suit, knowledge with respect to the said litigation was gathered. The learned Advocate states that the applicant is a rustic villager, who approached an Advocate for contesting suit filed against him. He states that Advocate did not advise the applicant to file the appeal challenging the decree for possession. Learned Advocate further states that an arguable point with respect to revocation of Will executed by testator prior to his marriage, after the date of marriage, falls for consideration. He states that the applicant is a *bona fide* purchaser for value without knowledge of the ongoing litigation and therefore delay should be condoned taking a liberal view of the matter.

4. Per contra, learned Advocate for the respondent No.1 strongly opposes the application. He contends that even going by the contents of the application, it is clear that the applicant was aware about the decree for possession, which is impugned in the present appeal at least before 07/12/2022 i.e. date on which the written statement is filed by the present applicant in the suit for injunction filed by respondent No.1 against him. He contends that despite having knowledge about the impugned decree in the year 2022, the appeal is filed after an inordinate long period on 06/05/2025. The learned Advocate contends that there is no plausible explanation for inordinate delay between October, 2022 to May, 2025.

5. Perusal of the application will demonstrate that the applicant has not suppressed the fact of filing of suit and filing of written statement. The applicant has, however,

contended that he was not advised by the Advocate concerned to file appeal, when written statement in the suit for injunction was filed. The learned Advocate contends that the applicant was under *bona fide* belief that since the suit was ongoing, the respective rights of the parties would be decided in the said civil suit. He, however, contends that possession of the suit property was taken from the applicant in execution proceedings on 04/03/2025 and at this stage, the applicant sought further legal advice and thereafter filed the appeal after collecting the relevant documents. The learned Advocate states that the delay is not wilful and deliberate and in any case not *mala fide*. He contends that the applicant is an agriculturist who has ventured to purchase the suit property for a consideration of Rs.8,00,000/- and therefore, this Court should take liberal view of the matter in exercising discretion in condoning the delay.

6. Having regard to the totality of circumstances, particularly, the fact that the appeal is preferred within a period of around two months from the date on which possession of the suit property was taken from the applicant, in the considered opinion of this Court, the delay should be condoned by taking liberal view. The applicant is contesting the civil suit for injunction filed against him diligently, which shows the intention of the applicant in protecting his rights. The explanation that since the civil suit was pending, the applicant who is a rustic villager was under impression that respective rights would be adjudicated in the suit, cannot be rejected outright. However, having regard to the delay that is occasioned it will be necessary to impose some costs on the

applicant in order to balance equities. The delay caused is around eight years. In view of the aforesaid, in the considered opinion of this Court costs of Rs.25,000/- should be imposed on the applicant.

7. Civil Application is allowed, subject to cost of Rs.25,000/- (Rupees Twenty Five Thousand Only) to be paid by the applicant to the respondent No.1 on or before 24/12/2025.

(ROHIT W. JOSHI, J.)