

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

CIVIL APPLICATION (CAS) NO.307 OF 2016

IN

SECOND APPEAL ST. NO.5446 OF 2014

Asha w/o Bhaurao Ugawkar, Gadchiroli

-vs-

Nagar Parishad Gadchiroli

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

Court's or Judge's Orders.

Shri P. S. Wathore, Advocate for applicant/appellant.
Shri V. N. Morande, Advocate for non-applicant/respondent.

CORAM : A.S.CHANDURKAR, J.

DATE : AUGUST 16, 2017

By this application it is prayed that the delay of
1774 days in filing the second appeal be condoned.

In the application it is stated that the first Appellate
Court on 02/02/2009 allowed the appeal filed by the
respondent and dismissed the suit filed by the applicant.
It is further stated that the applicant was suffering from
arthritis and spondylitis since long and hence was
required to remain at her home. It is then stated that
the applicant's husband who was in service was
transferred from Chandrapur to Wardha. He voluntarily
retired from service on 20/02/2012. The sons of the

applicant were also busy in their own engagements.

In September 2013, the applicant and her husband contacted their counsel after which they got the knowledge that the appeal had been decided by the first appellate Court but there was no intimation from their counsel. Hence after applying for the certified copy and after the applicant recovered from jaundice, the appeal came to be filed. Along with the application, various certificates have been filed to support the prayer made in the application.

Reply has been filed on behalf of the respondent in which it is stated that the explanation furnished does not deserve to be accepted. It is stated that even if a liberal view is taken, considering the unexplained delay the same does not deserve to be condoned.

After hearing respective counsel for the parties, I find that the explanation furnished by the applicant for the long delay of almost five years does not appear to be acceptable. The judgment of the Appellate Court is dated 02/02/2009. The record indicates that the applicant herself was prosecuting the proceedings and she had also led evidence before the trial Court. Her

husband retired from service in February 2012 and it is only in September 2013 that the enquiries were made with the counsel with regard to the appeal. The ailment of the applicant as stated is not of such nature that can prevent the applicant from even giving necessary instructions to other family members for challenging the judgment of the appellate Court. Hence, I find the delay of almost five years has not been satisfactorily explained. The Civil Application is therefore dismissed. Consequently the appeal does not survive.

JUDGE