

IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
BENCH AT AURANGABAD

CIVIL APPLICATION NO.11044 OF 2018 IN
SECOND APPEAL NO.772 OF 2017

Digambar s/o Pitambar Choudhari ...APPLICANT

VERSUS

Vishwas s/o Pitambar Choudhari ...RESPONDENT

.....
Shri G.D. Jain, Advocate for applicant
Shri Prakashsing B. Patil, Advocate for respondent
.....

CORAM: A.M. DHAVALÉ, J.

DATED : 2nd November, 2018.

ORAL ORDER :

1. By order dated 21.11.2017, the delay in filing Second Appeal was condoned subject to costs of Rs.3000/-, which was to be deposited within six weeks. The applicant did not deposit the amount within the stipulated time. he filed application before the first appellate Court on 23.4.2018 i.e. after a period of about four months. The first appellate Court filed application on the ground that the period stipulated by this Court was over.

2. By this application, the learned advocate for the

applicant seeks permission to deposit the amount now. The present application is filed on 23.8.2018, after about four months. Learned advocate relies on **Nashik Municipal Corporation Vs. R.M. Bhandari and another**, reported in [**AIR 2016 SC 1090**], wherein it is held that the period prescribed for extending the time limit under section 148 of the Civil Procedure Code can be extended in appropriate cases under Section 151 of the Civil Procedure Code. Mr. Jain points out that the applicant is very poor labourer. The dispute is between real brother and the applicant is aged 70 years and labourer, he was given assistance at State expenses.

3. Learned Advocate Mr. Prakashsing B. Patil for respondent argues that, there was gross negligence at every stage. The first appeal was filed with delay of two years. It is also not true that the the applicant is poor. The order of the appellate Court shows that he had sold his property for Rs.2,25,000/-. He is in habit of committing delay.

4. After considering the arguments and the facts I find that the delay was condoned in the interest of justice so as to afford opportunity to the applicant to prosecute the appeal. There is marginal delay, but the orders of this Court regarding the time limit must be followed and considering the tendency not to

abide by the time limits shown by the applicant at various stages, The Civil Application is allowed subject to enhancement of the amount from Rs.3000/- to Rs.5000/- (Rupees five thousand). The applicant shall deposit the amount of Rs.5000/- on or before 24th November 2018. No further extension will be granted. This order be uploaded immediately.

5. Parties to act upon authenticated copy of this order or uploaded order.

6. The fees of Mr. Jain, learned counsel for the applicant shall be paid by the Legal Services Sub-Committee, High Court, Aurangabad as per rules.

(A.M. DHAVAL)
JUDGE

fmp/