

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

Civil Application No. 1414/2017
in
Second Appeal St. No.18468/2017

Dnyaneshwar Deoraoji Ghaywat Vs. Ramesh s/o Deoraoji Ghaywat and others

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

Court's or Judge's orders.

Shri S.G. Hindaria, Advocate for Applicant/Appellant.
Shri N.V. Fulzele, Advocate for Non-applicant Nos. 1 to 8.

CORAM: A.S. CHANDURKAR, J.
DATE: 21-06-2018

It is prayed that the delay of 1333 days in filing the second appeal be condoned. In the application for condonation of delay, it is stated that the applicant was in service at Mumbai and he used to come at Nagpur from time to time for attending some functions and marriages. The judgment of the Appellate Court was delivered on 30th September 2013. The applicant had come to Nagpur in December 2014 to visit his relative whose leg was fractured. Thereafter, in June-2017 applicant had again come to Nagpur but due to shortage of funds the appeal could not be filed. Hence, it was prayed that delay was liable to be condoned.

Reply has been filed opposing the aforesaid application. It has been stated that the delay is of about 1347 days and the reasons mentioned in the application are not

sufficient for condoning the delay.

It is submitted by the learned Counsel for the applicant that considering the reasons mentioned in the application and as applicant was unable to file the appeal earlier due to financial reasons, the delay deserved to be condoned. He submitted that there was substantial merit in the appeal and prejudice would be caused if the delay is not condoned. Learned Counsel for the applicant placed reliance in the decision of *N. Balakrishnan v/s Krishnamurthy* reported in *1998 AIR SC 3222* and *Vinodkumar s/o Makhanlal Chaudhary v/s Kailashkumar s/o Makhanlal Chaudhary* reported in *2011 (1) Mh.L.J. 269*.

The learned Counsel for the non-applicants submitted that in absence of any proper explanation, the delay is not liable to be condoned. No details have been mentioned in the application and hence the same is liable to be rejected. He placed reliance in the case of *Chandrakant s/o Laxman Kulbhaiyya and another v/s State of Maharashtra and others* reported in *2014(5) ALL MR 609*.

Perusal of the application indicates that the only reason mentioned therein is the financial difficulty of the applicant for preferring the appeal. Though the applicant had been to come Nagpur at various occasions, it has not been stated

as to what steps were taken to file the appeal. As per the certificate relied upon by the applicant, he was receiving pension of Rs. 917/- per month. Except the ground of financial crisis, no other reason has been mentioned. Appeal could have been filed accompanied by some Court Fees by giving those reasons and seeking time to pay entire Court Fees. After examining the reasons mentioned in the application in the light of the decisions relied upon by the learned Counsel appearing for the parties, I do not find that the delay has been properly explained. There is no sufficient cause furnished for condonation of delay of almost 2 years and 11 months. On that count, the application is liable to be rejected.

Accordingly, the Civil Application stands rejected. No costs.

JUDGE

RKN