

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

**CIVIL REVISION APPLICATION NO.15/2019**

Ashish S/o Subashchandra Paliwal  
..Vs..  
Vithal S/o Ramaji Pathode and another

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

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Shri N.B. Kalwaghe, Advocate for the petitioner.  
Shri S.S. Sharma, Advocate for the respondent.  
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**CORAM : Z.A. HAQ, J.**  
**DATED : 27.8.2019.**

Heard.

2]           The appeal filed by the non-applicants before the District Court was dismissed in default. The non-applicants had filed application for restoration of the appeal / for re-admission of the appeal and as there was delay of about 359 days in filing the application, the respondents had filed application praying for condonation of delay. By the impugned order, learned Principal District Judge has allowed the application and has condoned the delay.

3]           According to the applicant, learned Principal District Judge has committed an error by condoning the inordinate delay of 359 days by accepting the explanation given by the non-applicants, which on the face of record could not have been accepted. It is

submitted that the non-applicant No.2 is in service and he attended the duties and in the application praying for condonation of delay, false explanation was given that he was prevented from attending the proceedings and filing the application for restoration of the appeal because of health problems. It is submitted that the explanation given in para 5 of the application praying for condonation of delay that he was advised rest is false and cannot be accepted. Some discrepancies in the medical certificate filed by the non-applicants in support of the application praying for condonation of delay are also pointed out. The judgment given by this Court in the case of *Leela Fondu Mayekar and others V/s. Damodar Datta Zuwarkar and another* reported in **2014 (5) Mh.L.J. 718** is referred to contend that if one of the party to the proceedings is capable of attending the proceedings then prayer for condonation of delay on the ground of illness of one of the party cannot be a ground to condone the delay.

4] The legal submission made by the learned Advocate for the applicant is proper. But, in the facts of the present case, I find that the learned Principal District Judge has examined all the relevant facts and has exercised discretion in favour of the non-applicants. It is not necessary for this Court to interfere with the exercise of discretion by the subordinate Court only because another view is possible. It is well settled that this Court while exercising supervisory powers should be slow in

interfering with the exercise of discretion by the subordinate Court. In the present case, it cannot be said that the applicant would be put to any irreparable loss or injury because of the impugned order. On the contrary, if this Court interferes with the impugned order, the non-applicants will be deprived of the opportunity of contesting the appeal on merits. Hence, I am not inclined to interfere with the impugned order. Civil revision application is **dismissed**. However, in the facts of the case, I find that the amount of costs imposed by the learned Principal District Judge is inadequate. The non-applicants are directed to pay Rs.10,000/- (Ten Thousand) to the applicant towards costs. The amount shall be deposited before the District Court within two months from today, failing which learned Principal District Judge shall pass appropriate orders against the present non-applicants considering it to be non-compliance of directions given by this Court. On deposit the of the amount, it be given to the applicant.

JUDGE