

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

**Civil Application (CAS) No.151/2019**  
**in**  
**Second Appeal Stamp No.2937/2019**  
**University Engineer Vs. Pramod Deshmukh and others**

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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

Mr. A.R.Sambre, Advocate for appellants  
Mr. B.N. Mohta, Advocate for respondents

**CORAM : MANISH PITALE, J.**

**DATED : SEPTEMBER 19, 2019**

This is an application for condonation of delay of 456 days. The Judgment and order of the Appellate Court sought to be challenged in the accompanying second appeal was passed on 07/08/2017 and the present application along with second appeal was filed on 06/02/2019.

2. It is contended on behalf of the applicants in the application that although Judgment and order was passed by the Appellate Court on 07/08/2017, allowing the appeal against the appellants and granting decree in favour of the respondents by reversing the Judgment and order of the Trial Court, the appellants first became aware about the said Judgment and order of the Appellate Court when they received a notice on 16/11/2018, from the executing Court stating that

execution proceedings were fixed for consideration on 23/11/2018. It is the case of the applicants that thereafter they contacted their panel counsel, who was representing them before the Appellate Court. Thereafter, steps were taken for procuring certified copies and the accompanying appeal was filed on 06/2/2019. According to the applicants, although from the date of the judgment and order there was delay of 456 days, if the date of knowledge was taken as on 16/11/2018, the appeal was filed within time.

3. Notice was issued in this application, in response to which respondents filed their reply, opposing the prayer for condonation of delay. It was stated that the appellant No.1, being an University with a separate legal department to look after the cases having a panel of lawyers to defend its interests, could not be heard to say that it was unaware about the Judgment and order passed by the Appellate Court. It was submitted that sufficient cause for condonation of delay was not made out. Thereafter, the applicants filed rejoinder affidavit and also further affidavit of the concerned Advocate, supporting the contentions raised in the application for condonation of delay and also placed on record letter dated 01/09/2017, which was prepared by the said Advocate immediately after the Judgment and order was passed by the Appellate court, but, the same could not be dispatched to the applicants due to inadvertence of the said Advocate. On the basis of such further affidavit and document,

the applicants submitted that the present application deserved to be allowed.

4. The learned counsel for the applicants relied upon the contention raised in the application, supporting affidavit and document to contend that there was no deliberate act on the part of the applicants to delay the proceedings and that when the suit filed by the respondents had been dismissed in the first instance by the Trial Court, there was no reason for the applicants to have delayed challenge to the judgment and order of the Appellate Court, whereby the verdict of the Trial Court had been upset and decree was passed against the applicant.

5. On the other hand, the learned counsel for the respondents vehemently opposed the contentions raised on behalf of the applicants. It was submitted that as per law laid down by the Hon'ble Supreme Court and this Court in various judgments, the applicants could not claim condonation of delay by simply blaming their Advocate and that the conduct of the applicants was such that the delay did not deserve to be condoned.

6. A perusal of the application, affidavit and documents on record shows that according to the applicants they were unaware about the Judgment and order passed by the Appellate Court and that they first became aware on 16/11/2018, when notice issued by

the executing Court was received. It is the case of the applicants that their Advocate, upon being contacted, informed that due to his inadvertence a letter prepared on 01/09/2017, in his office intending to inform the applicants about judgment and order dated 07/08/2017, was not dispatched, due to which the applicants were not informed well in time about the said Judgment and order. The copy of the letter and affidavit of the said Advocate is placed on record. After receiving notice on 16/11/2018, from the executing Court, the documents show that the accompanying appeal was indeed filed on 06/2/2019. In the explanation given by the applicants, read with affidavit of Advocate and aforesaid documents placed on record, it cannot be said that there was falsity or wrong statement made on behalf of the applicants. In this situation, it would be difficult to hold that the explanation given by the applicants is not bonafide.

7. The Judgment of the Hon'ble Supreme Court relied upon by the learned counsel for the respondents in the case of **Estate Officer, Haryana Urban Development Authority and another Vs. Gopi Chand Atreja, AIR 2019 Supreme Court 1423**, is clearly distinguishable on facts. In the case before the Hon'ble Supreme Court, delay was of 1942 days and it was found by the Hon'ble Supreme Court that such a huge delay of about 4 years and 6 months was not explained properly by the appellants. In the facts of that case, the Hon'ble Supreme Court observed that the appellants

were not justified in claiming condonation of delay by simply blaming their lawyer.

8. In the other judgment relied upon by the learned counsel for the respondents, passed by this Court in **Civil Application No.19/2018 in Second Appeal Stamp No.22803/2017 Kanta @ Sharti W/o Subhash Karkale Vs. Manjulabai @ Kholki W/o Haribhau Tarare and another**, on facts, it was found that the delay was of 20 years and that allegations were made by the applicant while seeking condonation of delay against the Advocate behind his back. The said case is clearly distinguishable on facts with the present case because in the instant case delay is of 456 days and the applicants have nowhere raised any contention against their Advocate. In fact, inadvertence or mistake that occurred in the office of the Advocate was placed on record and Advocate himself had filed his affidavit to explain that due to mistake in his office, the applicants could not be informed about Judgment and order dated 07/08/2017, passed by the Appellate Court, well within time for filing the accompanying appeal.

9. Therefore, the judgments relied upon by the learned counsel for the respondents are not applicable to the facts of the present case. For the same reasons, the contention raised on behalf of the respondents that there was lack of diligence on the part of officials of the applicant No.1 University, cannot be accepted. The

record shows that the appeal in the present case was pending before the Appellate Court since the year 1999 and it was ultimately disposed of on 07/08/2017. In such a situation, when the panel Advocate has filed affidavit and relevant document is placed on record to show that there was inadvertence and mistake in the office of the Advocate, leading to the applicants not being aware of Judgment and order of the Appellate Court dated 07/08/2017 till 16/11/2018, the said contention raised on behalf of the respondents regarding lack of diligence on the part of the officials of applicant No.1 University cannot be accepted.

10. In view of the above, it is found that the applicants have made out sufficient cause for condonation of delay.

11. Accordingly, the application is allowed and delay is condoned.

12. Office is directed to register the second appeal.

13. List this appeal for consideration in the 1<sup>st</sup> week of October, 2019.

JUDGE