

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

CIVIL APPLICATION (CAS) NO.588 OF 2018

IN

SECOND APPEAL NO.4805 OF2018

(Kurshidbi w/o Jilankha Khan ..vs.. Sultanbi w/o Sk. Mukhtar)

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

Court's or Judge's orders

Shri A.S. Chakotkar, Counsel for the applicant/appellant,
Shri Abdul Subhan, Counsel for the non-applicant/respondent.

CORAM : ROHIT B. DEO, J.

DATED : 02-04-2019

This application is taken out for condonation of delay of 1761 days (4 years 10 months) in preferring the second appeal.

2. The applicant is the original plaintiff whose suit for permanent injunction is decreed. The first appellate Court has set aside the judgment and decree of the trial Court.

3. The first appellate Court allowed the appeal of the non-applicant-original defendant on 30-1-2012. The reasons given to justify the inordinate delay are not convincing at all. The plaintiff states that her counsel was from Buldhana and that she was in regular touch with the counsel till 2011. The application then avers that her husband met with an accident on 24-7-2015. The next averment is that the counsel did not

communicate the judgment dated 30-1-2012 and that the applicant was under the impression that the appeal is pending. It is averred that the applicant tried to contact the counsel on many occasions by telephone but in vain. The applicant avers that she contacted some other counsel practicing at Deulgaon Raja and requested him to assist the applicant in finding out the status of the appeal. It is averred that the Counsel at Deulgaon Raja informed the applicant that the appeal is already decided in the year 2012. It is then stated that the applicant obtained certified copy and received the same on 05-1-2018. The justification is not believable.

4. This Court is noticing, in matter after matters, that the counsel is blamed and invariably an averment is made that the counsel did not inform the litigant that the appeal is decided. Such allegations must be dealt with iron hand. It is the duty of the litigant to keep in touch with the counsel and to attend the dates of the hearing and to, at any rate, be in touch with the counsel. The vague averment that the litigant tried to contact the counsel on telephone and could not establish contact, is inherently incredible. The application clearly lacks in *bona fides*.

5. However, only to satisfy the conscious of the Court, this Court has looked into the reasons recorded by the first appellate Court only to ascertain whether there

is some arguable issue in the appeal. This Court is satisfied that no question of law much less a substantial question of law is involved. The finding recorded by the first appellate Court is clearly a finding of fact which is based on appreciation of evidence on record and in exercise of jurisdiction under Section 100 of the Civil Procedure Code this Court would be loath to disturb such finding.

6. The application for condonation of delay is dismissed.

JUDGE

adgokar