

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

CIVIL APPLICATION (CAO) NO.1315 OF 2015 IN
MISC.CIVIL APPLICATION (MCA) ST.NO.20470 OF 2014 IN
CIVIL APPLICATION (CAO) NO.801 OF 2009 IN
MISC.CIVIL APPLICATION (MCA) ST.NO.11533 OF 2009 IN
FIRST APPEAL (FA) ST.NO.18679 OF 2006.

(Durgabai wd/o Krishnaji Mundle & Anr. Vs. Atmaram Pandurang Mundle (Dead) thr.LR's & Ors.)

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

Court's or Judge's orders.

Shri S.O.Ahmed, Advocate for the appellants.
Shri S.B.Tiwari, Advocate for respondent Nos.2(A) to
2(D).
Shri S.S.Sitani, Advocate for respondent Nos.1(A) to
1(C) and respondent No.3.

CORAM : PUSHPA V. GANEDIWALA, J.
DECEMBER 10, 2019.

Heard.

This is an application for condonation of 1552 days delay caused in filing review application for reviewing order dated 14/06/2010 passed on Civil Application No.801/2009.

It is stated that the appellants filed a suit for partition, separate possession and mesne profit i.e. Special Civil Suit No.43/2000 before the Court of Civil Judge Senior Division, Bhandara. The suit came to be dismissed. First Appeal bearing Stamp No.18679/2006 before this Court came to be dismissed for non-removal of office objections on

09/01/2007. It is submitted that the said order dated 09/01/2007 was not communicated to the appellants by their earlier counsel and only when the appellants received notice in Second Appeal which was filed by respondent No.1, they contacted their earlier counsel and at that time, they came to know about the dismissal of First Appeal Stamp No.18679/2006 for non-removal of office objections. It is stated that due to negligence of earlier counsel, as the office objection was not removed in stipulated time period, the appeal came to be dismissed.

It is stated that thereafter, the appellants took immediate steps for filing application for restoration along with application for condonation of delay on 27/07/2009. Their application for condonation of delay bearing No.801/2009 came to be dismissed for want of sufficient reasons. The applicants proposes to review this order.

The respondents resisted the application vide their reply stating therein that though the appellants blame their earlier counsel for such an inordinate delay, however, surprisingly, the appellants preferred application for condonation of delay i.e. Civil Application No.801/2009 along with restoration application through the same counsel. The appellant No.1 is contesting many cases filed by her or against her in different Civil Courts and she is not a neophyte lady.

Shri S.B.Tiwari, learned counsel for the respondents in support of his submissions relied on a couple of judgments on the point that the mistake on part of their Advocate cannot be treated as sufficient cause to condone the delay. They are as under:-

1. *B.Madhuri Goud Vs. B.Damodar Reddy* [(2012) 12 SCC 693] (Supreme Court).
2. *Vasant Vitthal Gawand Vs. Shantaram Tukaram Gawand since (D) by his LRs & Anr.* [2016(2) ALL MR 235] (Bombay High Court).

I have considered the submissions put forth on behalf of both the parties.

At the outset, in the instant case, it is not disputed that the appellant No.1 is the widow and appellant No.2 is her minor daughter. Appellant No.1 is fighting various cases against her father-in-law and other in-laws in various Courts of law with regard to their property disputes. It is her case that immediately, after the death of her husband, she was expelled from her matrimonial house by respondent No.1 – her father-in-law. The reason for delay is stated to be the non-communication of the dismissal of the appeal by her counsel.

It is also not disputed that the First Appeal bearing Stamp No.18679/2006 came to be dismissed for non-removal of office objections. Apparently, the

said mistake appears to be of the counsel. The argument that even after mistake made by the counsel, the same counsel was engaged for filing of present application for condonation of delay along with restoration applicant, cannot be accepted. It is not disputed that so many cases are pending between the parties and she was representing through the same counsel. Just for one mistake on part of the lawyer, it cannot be said that the lawyer would have to be changed. Afterall, the party has to trust on his/her lawyer.

Furthermore, in the instant case, she is fighting for the share of her husband in the joint family properties. The suit was for partition and separate possession, which was dismissed. Without even registering the First Appeal, the appeal on Stamp No. itself came to be dismissed in default for non-removal of office objections.

It is well settled that the length of the delay doesn't matter. The Court has to see the sufficient reason and the ultimate effect of its order. The above cited judgments are distinguishable on facts and hence are not applicable to the facts of the instant case.

Considering the specific facts and circumstances of the case in hand, one opportunity needs to be given to her.

For the reasons aforesated, I am inclined to allow the application and the same is accordingly allowed. Delay of 1552 days caused in filing review application stands condoned. Review application be registered.

Civil Application is disposed of accordingly.

MISC.CIVIL APPLICATION (MCA) ST.NO.20470 OF 2014

Review application be registered.

S.O. to 13/12/2019.

JUDGE