

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

CIVIL APPLICATION NO.19/2018 IN
SECOND APPEAL ST. NO.22803/2017

Kanta alias Shanti w/o Subhash Karkale .vs. Manjulabai alias Kholki w/o
Haribhau Tarare and anr.

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

Court's or Judge's orders.

Mr. K. S. Motwani, Advocate for applicant.

Mr. R. A. Gupte, Advocate for non applicant nos. 1 and 2.

CORAM : V. M. DESHPANDE, J.

DATED : JUNE 18, 2019

This is an application for condonation of delay in filing the second appeal. Notices on this application were issued. Pursuant to the notices issued, the non applicants appeared and filed their reply, opposing the application for condonation of delay.

I have heard Mr. Motwani, learned counsel for the applicant and Mr. Gupte, learned counsel for the non applicants.

At the outset, it is to be mentioned that the delay is of 20 years. This delay is huge one. Merely because delay is huge one, that does not disentitle a party coming before the Court for condonation of delay. The quantum of delay may be one of the consideration however it is not the final guiding factor for the Court to decide an application for condonation of delay. A party, who seeks indulgence from

the Court in respect of condonation of delay to file the appeal, burden lies on the shoulder of such a party to explain the delay, though not day by day, but by giving plausible explanation. According to the learned counsel for the applicant, the applicant entrusted her brief to her advocate and her advocate did not take any steps to pursue the matter. Consequently, the delay has occurred inasmuch as it is the submission of the learned counsel that the counsel, who was representing the applicant did not inform the outcome of the litigation to her.

This submission, at the first blush, appears very attractive and tends the Court to interfere with the matter. However, after hearing the learned counsel for the applicant, especially when a query was put to the learned counsel in respect of the conduct on the part of the applicant as to whether at any point of time, she on her own, contacted her advocate, the reply was in negative. A litigant who approaches to the Court must be diligent. He or she must take all steps to pursue his or her litigation. It is expected from the litigant that he or she is in contact with the lawyer who is representing his or her cause in the Court of law. A litigant cannot take a spacious plea that once the case is entrusted with an the advocate his or her work is over and the advocate will take care of the matter. An Advocate always discharges his duties on the instructions given to him by his client.

In the present case, Mr. Motwani, learned counsel for the applicant could not point out before this Court that at any point of time from 18.10.1997, when the decree, which is sought to be challenged before this Court, was passed, the applicant even remotely tried to contact her advocate to know the fate of litigation.

In the application, it is stated that she entrusted her matter to Mr. Vilas Mate, of Tumsar. She never met with Mr. Bhole, Advocate. According to the learned counsel for the applicant, Mr. Bhole might, on instructions from Mr. Vilas Mate, have appeared before the Court below.

It is very easy for a litigant to make allegations against an advocate behind his back. If the applicant wishes to make allegations against the advocate, the applicant should have a courage to join the advocate as a party and in his presence should make allegation against him. Here, the applicant wants to condemn the advocate behind his back. In my view, it is impermissible and unacceptable. Further, no steps are also being taken by the applicant against any advocate under the provision of the Advocates Act.

Thus, in my view, the reason as supplemented in the application is nothing but a attempt for claiming discretionary relief of condonation of delay from the Court. In my view, the applicant has not explained the delay, rather has not given plausible explanation for delay. Hence, the application is liable to be dismissed and it is dismissed with costs of Rs.1,000/- to be paid to the High Court Legal

Services Sub Committee, Nagpur within three weeks from today.

The application is dismissed. Consequently, the second appeal is also dismissed.

JUDGE

kahale