

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

CIVIL APPLICATION (CAS) NO. 1284/2018
IN
SECOND APPEAL ST. NO. 18987/2018

*[Rajendra Mahadeorao Patankar Vs. Mahadeorao Anandrao Patankar (Dead through legal heirs)
Smt. Kausalyabai Wd/o Mahadeorao Patankar & Ors.]*

Office Notes, Office Memoranda of
Coram, appearances, Court's Orders
or directions and Registrar's
order

Court's or Judge's Order

Shri Prasad Dharaskar, Advocate for appellant
Shri K.J. Topale, Advocate for respondent nos.1 to 4

CORAM : M. G. GIRATKAR, J.

DATE : 07/02/2020

Heard.

This application is for condonation of delay of 834 days. Learned Advocate Shri Dharaskar has submitted that the appellant has given Rs.10,500/- to Advocate Shri Gadge. Shri Gadge assured him to file appeal, but not filed the same. Therefore, complaint was made to Bar Council of Maharashtra & Goa.

Learned Advocate submitted that there is reasonable and proper ground for not filing appeal within a period of limitation. In support of his submission he has pointed out the judgment of Hon'ble Apex Court in the case of *Rafik and another .Vs. Munshilal and another* reported in *AIR 1981 SC 1400*.

Learned Advocate Shri Topale strongly

objected the application. He has pointed out order in Civil Application No.19/2018 in Second Appeal St. No.22803/2017 and submitted that it easy to make allegations litigant behind his back. Appellant is at liberty to take necessary action against the said Advocate. Hence the application is liable to be rejected.

In the cited judgment in Civil Application No.19/2018 in Second Appeal St. No.22803/2017 the delay was of 20 years and in the present application delay is of more than two years and some months. Hon'ble Apex Court in case of **Rafik and another .Vs. Munshilal and another** reported in **AIR 1981 SC 1400** held that

“Where an appeal filed by the appellant was disposed of in absence of his counsel, so also his application for recall of order of dismissal was rejected by the High Court, the Supreme Court in appeal set aside both the orders of dismissal on ground that a party who, as per the present adversary legal system, has selected his advocate briefed him and paid his fee can remain supremely confident that his lawyer will look after his interest and such a innocent party who has done everything in his power and expected of him should not suffer for the inaction, deliberate omission of misdemeanour of his counsel”

In the case of **Collector, Land Acquisition, Anantnag and another .Vs. Mst. Katiji and others** reported

in 1987(2) SCC 107 the Hon'ble Apex Court has held that:

“the reason for condonation of delay can not be sought for each and every date”.

Looking to the submission, application is allowed. Delay is condoned. Appeal be registered.

SECOND APPEAL ST. NO. 18987/2018

Heard.

Call R. & P.

List this appeal after receipt of R. & P.

JUDGE

C.R. Khobragade