

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

933 CIVIL REVISION APPLICATION NO.40 OF 2022

Champabai Shivaji Kashid

.. Applicant

Versus

Nilawati Bhagwat Gawali and Others

.. Respondents

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Advocate for Applicant : Mr. Dinesh Manwatkar h/f.
Mr. Sachin S. Randive

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CORAM : MANGESH S. PATIL, J.

DATE : 31-03-2022

PER COURT :

. By way of this revision under Section 115 of the Code of Civil Procedure, the applicant, who is respondent no.2 before the lower appellate court is challenging the order passed by it on the application of respondent no.1, who is the sole appellant, for restoration of the Civil Appeal with a prayer to condone the delay of 8 years, 6 months and 24 days occasioned in applying for restoration.

2. The learned advocate for the applicant submits that there was enormous delay. The grounds put forth by respondent no.1 were not sufficient to condone the delay. She had got the knowledge about dismissal of the appeal earlier to what she has stated in her

application dated 23-02-2016. Considering the enormity of delay that was condoned by the lower appellate court, even costs were not imposed proportionately.

3. I have carefully gone through the papers including the order under challenge and the submissions of the learned advocate.

4. It is apparent that the appeal was dismissed in default for not taking steps on 05-09-2008. According to respondent no.1, she got the knowledge about such dismissal only after she came to know that some sale transactions in respect of the properties in dispute had taken place. She had further stated that even the advocate, who was representing her, had joined judiciary when the steps were to be taken and had proceeded for a training and there was a communication gap. Conspicuously, she filed an affidavit in support of her such version.

5. Going by the order passed by the lower appellate court, neither the present applicant had sought to cross-examine respondent no.1 on her statements made in the affidavit nor was any affidavit filed by her controverting whatever was stated by the former. The lower appellate court relying upon the statements in the affidavit has found that there was sufficient cause to condone the delay and has

exercised the discretion by condoning the delay subject to imposing costs of Rs.3000/-.

6. Order under challenge by no stretch of imagination can be said to be the perverse, arbitrary or capricious which are the conditions precedent for invoking the powers under Section 115 of the Code of Civil Procedure.

7. The Civil Revision Application is dismissed *in limine*.

(MANGESH S. PATIL)
JUDGE

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